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SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

WRITTEN COMMENTS

ON

PROPOSED CONVERSION OF THE TARIFF SCHEDULES OF THE UNITED STATES INTO THE HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM

MAY 13, 1987

Printed for the use of the Committee on Ways and Means by its staff

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FOR IMMEDIATE RELEASE
MONDAY, JANUARY 12, 1987

SUBCOMMITTEE ON TRADE #1
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-3943

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES REQUEST FOR WRITTEN COMMENTS ON PROPOSED CONVERSION OF THE TARIFF SCHEDULES OF THE UNITED STATES INTO THE HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee on Trade is requesting written testimony for the record from all interested parties on the third edition of the proposed conversion of the Tariff Schedules of the United States (TSUS) into the nomenclature structure of the Harmonized Commodity Description and Coding System (Harmonized System), issued in October 1986.

The Harmonized System is a new standardized international product nomenclature, developed under the auspices of the Customs Cooperation Council in Brussels, being proposed for worldwide use for the classification, description, and coding of articles in trade for customs tariff, statistical, and transport documentation purposes. The Harmonized System will be implemented by an international convention that obligates contracting parties to use the six-digit nomenclature as the basis for their national customs tariff and statistical nomenclatures for imports and exports.

The United States participated in the development of the Harmonized System in accordance with section 608(c) of the Trade Act of 1974. At the request of the President, the U.S. International Trade Commission has prepared three editions of a draft conversion of the TSUS into the nomenclature structure of the Harmonized System. The United States and other major trading countries have set January 1, 1988, as the target date for implementation of the Harmonized System, subject to Congressional approval. The Administration has announced plans to submit to the Congress in early 1987 the legislation required for implementation of the U.S. Harmonized System tariff schedule.

The public is invited to comment on the broad implications of adopting the Harmonized System, as well as the implications and likely effects with respect to particular U.S. industries of adopting the proposed conversion, including the conversion of existing U.S. tariff concessions into the Harmonized System nomenclature. The Committee would also welcome comments on matters which should be addressed in implementing legislation. These comments will help provide the basis for the Committee's decision as to whether, and in what form, implementing legislation should proceed.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Persons submitting written comments should submit six (6) copies by the close of business, Friday, February 27, 1987, to Joseph K. Dowley, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102 Longworth House Office Building, Washington, D.C. 20515.

SEE ENCLOSED FORMATTING REQUIREMENTS.

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American Association of
Exporters and
Importers
11 West 42nd Street, New York, NY 10036 (212) 944-2230
Cable: AAOEXIM

EUGENE J. MILOSH
President

February 23, 1987

Mr. Joseph K. Dowley
Chief Counsel, Committee on Ways and Means
U.S. House of Representatives, Room 1102
Longworth House Office Building
Washington, DC 20515

Dear Mr. Dowley:

These comments are submitted on behalf of the American Association of Exporters and Importers (AAEI) pursuant to the press release dated January 12, 1987 from The Honorable Sam M. Gibbons (D. Fla) Chairman, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, concerning the Harmonized Commodity Description and Coding System (HS).

AAEI has been the national voice of the international trade community since 1921 and currently has in excess of 1100 members. We have taken an active role in representing our members before the Executive branch, Congress, the United States Trade Representative, the International Trade Commission and the United States Customs Service. Some of the product groups which our members represent are textiles and apparel, footwear, chemicals, machinery and automobiles as well as their supporting industries.

AAEI has participated in the development of a United States response to the H.S. proposals since their inception. The Textile and Apparel, and Chemical groups of AAEI have expressed on several occasions, comments on their sector specific commodities to the United States Trade Representative. In addition to comments on classification issues, we have urged the Administration, the International Trade Commission and other governmental bodies to examine the legal framework in which the H.S., if enacted, will be set. In particular, we have urged careful examination of United States obligations and opportunities resulting from accession to the H.S. Convention, and analysis of the interplay of requirements for the maintenance of uniformity on the international scene on the one hand and recognition of the duty of the courts under Article III of the Constitution to declare the meaning, scope and constitutionality of the statutes of the United States on the other.

AAEI, along with our Textile and Apparel and Chemial groups concur that in the absence of a bill it is impossible to comment on these aspects of the H.S. proposal. We therefore commend the effort of the sub-committee and staff to collect and analyze comments on the classification aspects of the H.S., as it is now doing, but strongly urge that the present comment period not be viewed as replacing hearings before the sub-committee if and when a bill is introduced.

We request that the sub-committee at the earliest convenient moment advise the public that hearings will be held to seek information and views on the issues mentioned above at such time as a bill to implement the H.S. is introduced.

Sincerely,

Eugene J. Milosh

American Association of
Exporters and
Importers 11 West 42nd Street, New York, NY 10036 (212) 944 2230
Cable AAOEXIM

Textile & Apparel Group

Comments of AAEI-TAG on Proposed Conversion of the Tariff Schedules of the United States Into the Harmonized Commodity Description and Coding System.

We are writing on behalf of the Textile and Apparel Group of the American Association of Exporters and Importers (AAEI-TAG) to express our views on the contemplated Conversion of the Tariff Schedules of the United States into the nomenclature structure of the Harmonized System. AAEI-TAG is comprised of over 100 importers and retailers of textiles and apparel and related companies which account for a substantial share of all U.S. textile and apparel imports. A copy of our membership list is attached.

At this time, neither the interagency review proviso nor the international negotiations under Article XXVII of the GATT are complete. As such, the exact provisions of the final Conversion are uncertain. However, we are gravely concerned regarding the enormous increases in duties presently contemplated on textile and apparel products as set forth in the latest Draft Conversion of October 1986.

AAEI-TAG has commented and testified extensively on the development of the Conversion during the past 4 years, most recently in the enclosed comments submitted with respect to the apparel chapters of the October, 1986 Draft. With isolated exceptions, the concerns we have raised during the process of developing the Conversion have not been addressed. The main issues not addressed concern:

1. the high duty rates resulting from the merger of non-ornamented and ornamented classifications;

2. the migration into high duty classifications resulting from the shift to the chief weight as the system of classification; and

3. the higher duty rates resulting from the change in the definition of coated fabrics.

Fundamentally, these higher duty rates set forth in the apparel chapters of the current Draft are broadly incompatible with President Reagan's directive that the Conversion "avoid to the extent practicable and consistent with sound nomenclature principles, changes in rates of duty in individual products."

Merged Ornamented/Non-Ornamented Classifications

Chief among the problems of the Draft Conversion is the use of arithmetic averaging to establish rates of duty for Harmonized System classifications resulting from the merger of the existing ornamented and non-ornamented classifications. This methodology contrasts with the trade-weighted average or proponderance of trade method overwhelmingly used elsewhere in the Conversion to establish rates for merged classifications. The use of arithmetic averaging is particularly inappropriate in view of both the disparity of duty rates in classifications being merged and the substantially larger volume of trade in the non-ornamented, lower duty rate, classifications. The use of arithmetic averaging rather than trade-weighted averaging will result in an increase of over 30 million dollars of duties annually in just four such classifications.

We understand that rather than rectifying this inequity by reducing duty rates in conformity with the principle of trade weighted averaging, the Government is contemplating a return to the use of ornamentation as a principle of classification. No useful purpose would be served by such an action. The concept of ornamentation is a vestige of an earlier era and has no place in the Harmonized System. Moreover, under present law, it is a term of ambiguous meaning and perhaps the most confused area of apparel classification. As a result, both the U.S. Customs Service and the American Apparel Manufactures Association have called for its elimination in the Harmonized System. The continued utilization of ornamentation as a classification principle would be clearly inconsistent with the guidelines set forth by President Reagan regarding simplification of the tariff structure and the alleviation of administrative burdens on the U.S. Customs Service. TAG believes that making importers, and through them consumers, pay additional duties for retention of a distinction no one desires is bad public policy.

Chief Weight/Chief Value

A second major problem relates to the duty rates currently assigned apparel of chief value, silk, linen, or ramie, chief weight, cotton, wool, and manmade fibers. The substitution of chief weight for chief value as a basis of classification under the Harmonized System will result in enormous duty rate increases on these products, in some clasifications from 6 percent ad valorem to 37 percent ad valorem, and will result in additional millions of dollars of duties being imposed on imports of these products. AAEI-TAG has recommended establishing separate classifications for these products at present duty rates as a possible solution to this problem. The establishment of separate classifications would be consistent with the structure of the current Draft Conversion which maintains separate classifications for at least 15 percent by weight of down of feathers and apparel of at least 25 percent by weight of leather. Alternatively, AAEI-TAG has proposed modification of the U.S. Notes to the apparel chapters to allow classification of these products at their existing duty rates. To date this serious problem has not been corrected.

Coated Fabrics

A third major source of significant duty increases is the change of definition of coated fabric as applied to apparel. Under the current definition, apparel manufactured of fabrics with coatings "which visibly and significantly affect the surface or surfaces thereof other than by change in color" are subject to duty rates of 6.6 percent or 7.6 percent ad valorem. The Court of Customs and Patent Appeals has held that the visibility of the coating to the unaided eye is irrelevant. However, the Harmonized System defines these apparel as being manufactured of fabrics with coatings which can be seen "with a naked eye." As such, apparel articles currently subject to duty rates of 6.6 percent or 7.6 percent ad valorem will be subject to duty rates up to 29.8 percent. The result will be millions of additional dollars of duties on outerwear. We have urged that supplemental classifications be established to alleviate problem. However, as with our other major concerns, it appears the Government is not contemplating the changes necessary to re-establish existing duty rates for these products.

AAEI-TAG recognizes the extraordinary complexity of the Conversion process. However, we are extremely concerned about the enormous duty increases in the apparel chapters. These problems are pervasive and affect a vast amount of trade. The current duty rate structure of the apparel chapters violates not only President Reagan's guidelines for the Conversion, but the fundamental intent of the Conversion itself.

Consumers already bear an enormous cost as a result of the existing duty rates on apparel, which are among the highest of all

imported products. The contemplated rate increases would needlessly add tens of millions of dollars to this burden. Although AAEI-TAG recognizes the merit of establishing a uniform international system of trade classification, the penalties imposed upon textile and apparel importers, retailers and consumers under the proposed Harmonized System are grossly disproportional to any possible benefit.

TAG MEMBERSHIP LIST - February 1987

CHILDRENS APPAREL

Baby Togs
Baby Fair
Renzo Co. Inc.
Shalom Childrens Wear
Victor B. Handal Inc.
Playknit/Steven Barry

MENS APPAREL

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Generation One Apparel
Irving B. Reder & Co. Inc.
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American Fair Trade Council

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Nissho - Iwai American Corp.	- Machinery, Metals, Chemicals, Textiles
Spiegel	- Mailorder
Plastic Safety Products	- Safety Products
Jacob Ash	- Gloves & Rainwear
Magid Gloves	- Gloves
Totes Inc.	- Rainwear

NOT LISTED

HWL Associates
Heartland Co. Ltd
Lapson International
Paul Reed Inc.
Rodolph Inc.

American Dairy Products Institute

130 North Franklin Street · Chicago, Illinois 60606
(312) 782-4888 or 782-5455

WARREN S. CLARK, JR., PH.D.
Executive Director

January 13, 1987

COMMITTEE ON
RECEIVED
JAN 16 1987
WAYS AND MEANS

The Honorable Dan Rostenkowski
U.S. House of Representatives
Chairman, Ways & Means Committee
Washington, DC 20515

Dear Congressman Rostenkowski:

In 1984, with your cooperation and support, three additional dairy products were recognized and given separate line item status in the Tariff Schedules of the United States (TSUS). Under the provisions of the Trade and Tariff Act of 1984, these products and their TSUS references were: Whey Protein Concentrate, 118.35; Lactalbumin, 118.40; and, Milk Protein Concentrate, 118.45. Currently, the Trade Policy Staff Committee is finalizing the third edition of the proposed conversion of the TSUS into the nomenclature structure of the Harmonized Commodity Description and Coding System (HS), and this communication is for the purpose of advising you of continued industry interest in and recommendations on the conversion program.

The processed dairy products industry, previously through the American Dry Milk Institute and the Whey Products Institute, and now through its new association, the American Dairy Products Institute -- formed by a merger of ADMI and WPI -- is keenly interested in the conversion as such relates to dairy products within the scope of its activities. Accordingly, in addition to submitting comments regarding the conversion to the TPSC, we have further offered assistance to ensure that the final U.S. version of the HS is a meaningful and responsible reflection of domestic processed dairy products.

We are enclosing an information copy of our latest comments to the TPSC, soliciting your review and support thereof to ensure that dairy products -- as well as all U.S. products reflected in the HS -- are properly codified in accordance with existing TSUS definitions and classifications.

Following your review, if you have any questions regarding the enclosed materials, please contact the undersigned. We look forward to learning of your support of these recommendations.

Sincerely yours,

Warren S. Clark, Jr., Ph.D.
Executive Director

WSC:sjf
Enclosure

American Dairy Products Institute

130 North Franklin Street · Chicago, Illinois 60606
(312) 782-4888 or 782-5455

WARREN S. CLARK, JR., PH.D.
Executive Director

January 12, 1987

Ms. Carolyn Franks, Secretary
Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, N.W. - Room 521
Washington, DC 20506

Re: Trade Policy Staff Committee
Written Comments on the Harmonized Commodity Description and Coding System
Federal Register 51 (230), 43262-3
December 1, 1986

Dear Ms. Franks:

The American Dairy Products Institute, formed on April 17, 1986 by a merger of the 61-year-old American Dry Milk Institute and the 15-year-old Whey Products Institute, is the national trade association of the processed dairy products industry. Members of the Institute include manufacturers and processors of the majority of dry milks and whey products produced in the U.S. The American Dairy Products Institute, on behalf of its membership and the processed dairy products industry which it represents, submits the following comments with regard to the third edition of the Harmonized Commodity Description and Coding System and recommends their incorporation under the headings indicated in the final U.S. version of the Harmonized Commodity Description and Coding System.

On October 13, 1983, the undersigned appeared before the Trade Policy Staff Committee, as well as submitting a written brief (copy attached), to present industry views on converting the Tariff Schedules of the United States Annotated (TSUS) into the nomenclature and structure of the Harmonized Commodity Description and Coding System (HS). Our views at this time remain unchanged. However, in the interval since October, 1983, the TSUS was revised, adding items 118.35, 118.40 and 118.45, and we respectfully request that the products represented by these TSUS line items be retained in their respective categories in the HS. We are pleased to submit the attached summary of our comments for your ease of review since it reflects all dairy products currently within the scope of activity of the American Dairy Products Institute and their coding both by the current TSUS and the proposed HS.

The American Dairy Products Institute wishes to take this opportunity to offer our assistance to the Committee in finalizing the Harmonized Commodity Description and Coding System as a meaningful and responsible reflection of U.S.-processed dairy products. Please do not hesitate to call upon us at any time regarding this matter and for any assistance that we may provide.

Sincerely yours,

Warren S. Clark, Jr., Ph.D.
Executive Director

WSC:sjf
Enclosures

American Dairy Products Institute
130 North Franklin Street
Chicago, IL 60606

*

Comments regarding TSUS and proposed HS classification of selected dairy products

Processed Dairy Product	TSUS Item	Proposed HS Number	Rates of Duty	Comment(s)
Dry Buttermilk	115.45	0403.90.40	No Change	None
Nonfat Dry Milk	115.50	0402.21.10	No Change	None
Dry Whole Milk	115.55	0402.21.40	No Change	None
Dry Cream	115.60	0402.21.60	No Change	None
Dry Whey Includes: Reduced Lactose Whey Reduced Minerals Whey	118.05	0404.10.40	No Change	None
Whey Protein Concentrate	118.35	0404.90.05	No Change	None
Lactalbumin	118.40	3502.90.10	No Change	Should be: 0404.90.10 This product is a more concentrated form of whey protein than is Whey Protein Concentrate (0404.90.05) and should occupy the subsequent line entry, and number, (0404.90.10) tentatively assigned to the product Milk Protein Concentrate.
Milk Protein Concentrate	118.45	0404.90.10 and 3501.10.10	No Change	Should be: 0402.21.60 This product currently is listed identically under two different chapters of the HS -- Chapter 4 (Dairy Produce [Products]) and Chapter 35 Albuminoidal Substances. The product was granted line item status in TSUS in 1984 under the provisions of the Trade and Tariff Act of 1984. As a dairy (concentrated milk) product, it should be classified in Chapter 4 as 0402.21.60, incorporating the existing TSUS definition -- "The term milk protein concentrate means any complete milk protein (casein plus albumin) concentrate that is 40% or more protein by weight." The current entry for 0402.21.60 (Other) should be reflected as 0402.21.80.

TARIFF SCHEDULE OF THE UNITED STATES ANNOTATED

(Converted to the Harmonized System and reflecting final MTN conversion rates of duty)

Heading	Stat. Suffix	Article Description	Units of Quantity	Rates of Duty 1 General	Special	2
0401		Milk and cream, not concentrated nor containing added sugar or other sweetening matter:				
0401.10.00	00	Of a fat content, by weight, not exceeding 1 percent	liters..	0.4¢/liter	Free (E)	0.5¢/liter
0401.20		Of a fat content, by weight, exceeding 1 percent but not exceeding 6 percent:				
0401.20.20	00	For not over 11,358,236 liters entered in any calendar year	liters..	0.5¢/liter	Free (E)	1.7¢/liter
0401.20.40	00	Other	liters..	1.7¢/liter	Free (E)	1.7¢/liter
0401.30		Of a fat content, by weight, exceeding 6 percent:				
		Of a fat content, by weight, not exceeding 45 percent:				
0401.30.10	00	Described in additional U.S. note 1(e) 1/	liters..	3.2¢/liter	Free (E)	15¢/liter
0401.30.30	00	Other	liters..	15¢/liter	Free (E)	15¢/liter
0401.30.40	00	Other 1/	liters.▽ kg	12.5¢/kg	Free (E)	31¢/kg
0402		Milk and cream, concentrated or containing added sugar or other sweetening matter:				
0402.10.00	00	In powder, granules or other solid forms, of a fat content, by weight, not exceeding 1.5 percent 1/	kg.....	3.3¢/kg	Free (E)	8.8¢/kg
		In powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5 percent:				
0402.21		Not containing added sugar or other sweetening matter:				
0402.21.20	00	Of a fat content, by weight, not exceeding 3 percent 1/	kg.....	3.3¢/kg	Free (E)	8.8¢/kg
0402.21.40	00	Of a fat content, by weight, exceeding 3 percent but not exceeding 25 percent 1/	kg.....	8.8¢/kg	Free (E)	13.7¢/kg
0402.21.60	00	Milk Protein Concentrate	kg	6.99¢/kg	Free (A,C)	124¢/kg
0402.21.80	00	Other 1/	kg.....	13.7¢/kg	Free (E)	27.5¢/kg
0402.29.00	00	Other 1/	kg.....	17.5%	Free (E)	35%
0402.91		Other: Not containing added sugar or other sweetening matter:				
0402.91.20	00	In airtight containers 1/	kg.....	2.2¢/kg	Free (E)	4¢/kg
0402.91.40	00	Other 1/	kg.....	3.3¢/kg	Free (E)	5.0¢/kg
0402.99		Other: Condensed milk:				
0402.99.20	00	In airtight containers 1/	kg.....	3.0¢/kg	Free (E)	6¢/kg
0402.99.40	00	Other 1/	kg.....	3.3¢/kg	Free (E)	5.0¢/kg
0402.99.80	00	Other 1/	kg.....	17.5%	Free (E)	35%

1/ Certain articles provided for herein may be subject to quotas. See chapter 99 and statistical note 1 to this chapter.

TARIFF SCHEDULE OF THE UNITED STATES ANNOTATED

(Converted to the Harmonized System and reflecting final MTN concession rates of duty) 4-5

Heading	Stat. Suffix	Article Description	Units of Quantity	Rates of Duty		
				General	Special	2
0404		Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included:				
0404.10		Whey, whether or not concentrated or containing added sugar or other sweetening matter:				
0404.10.20	00	Fluid	liters..	0.4¢/liter	Free (E)	0.5¢/liter
0404.10.40	00	Dried 1/	kg.....	3.3¢/kg	Free (E)	8.8¢/kg
0404.90		Other:				
0404.90.03	00	Whey protein concentrates	kg.....	10%	Free (A,E)	20%
0404.90.10	00	Milk protein concentrates	kg.....	0.4¢/kg	Free (A,E)	12¢/kg
0404.90.20	00	Articles of milk or cream 1/	kg.....	17.5%	Free (E)	35%
0404.90.40	00	Other: Containing over 5.5 percent by weight of butterfat and not packaged for retail sale 1/	kg.....	15%	Free (E)	20%
0404.90.60		Other 1/	.....	10%	Free (E)	20%
	20	Subject to quotas proclaimed pursuant to section 22 of the Agricultural Adjustment Act, as amended: Provided for in subheading 0404.10.75	kg			
	40	Provided for in subheading 0404.10.81	kg			
	80	Other	kg			
0405		Butter and other fats and oils derived from milk:				
0405.00		Butter:				
0405.00.70	00	Described in additional U.S. note 1(b) 1/	kg.....	13.3¢/kg	Free (E)	30.9¢/kg
0405.00.73	00	Other	kg.....	30.9¢/kg	Free (E)	30.9¢/kg
0405.00.80		Other 1/	.....	10%	Free (E)	20%
	20	Anhydrous milk fat	kg			
	40	Other	kg			

1/ Certain articles provided for herein may be subject to quotas. See chapter 99 and statistical note 1 to this chapter.

TARIFF SCHEDULE OF THE UNITED STATES ANNOTATED

(Converted to the Harmonized System and reflecting final MTN concession rates of duty)

Heading	Stat. Suffix	Article Description	Units of Quantity	Rates of Duty		
				General	Special	2
3501		Casein, caseinates and other casein derivatives; casein glues:				
3501.10		Casein: More to 0402.21.10				
~~3501.10.10~~	~~00~~	~~Milk protein concentrates~~	~~kg~~	~~0.44¢/kg~~	~~Free (A,E)~~	~~10¢/kg~~
3501.10.50	00	Other	kg	Free		Free
3501.90		Other:				
3501.90.20	00	Casein glues	kg	7.5%	Free (A,E)	30%
3501.90.50	00	Other	kg	0.44¢/kg	Free (A,E)	12.1¢/kg
3502		Albumins, albuminates and other albumin derivatives:				
3502.10		Egg albumin:				
3502.10.10	00	Dried	kg	30.5¢/kg	Free (E)	30.5¢/kg
3502.10.50	00	Other	kg	12.1¢/kg	Free (E)	24.3¢/kg
3502.90		Other: More to 0404.90.10				
~~3502.90.10~~	~~00~~	~~Milk albumin~~	~~kg~~	~~Free~~		~~Free~~
3502.90.50	00	Other	kg	Free		Free
3503.00		Gelatin (including gelatin in rectangular (including square) sheets, whether or not surface-worked or colored) and gelatin derivatives; isinglass; other glues of animal origin, excluding casein glues of heading 3501:				
3503.00.10	00	Fish glue	kg	1.8¢/kg + 2.4%	Free (A,E)	17.6¢/kg + 25%
3503.00.20	00	Inedible gelatin and animal glue valued under 88 cents per kg	kg	1.8¢/kg + 5%	Free (E)	5.5¢/kg + 20%
3503.00.50		Other		4.4¢/kg + 6%	Free (A,E)	15.4¢/kg + 20%
	10	Edible gelatin	kg			
	20	Photographic gelatin	kg			
	50	Other	kg			
3504.00		Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed:				
3504.00.10	00	Protein isolates	kg	10%	Free (A,E)	20%
3504.00.50	00	Other	kg	7.9%	Free (A,E)	30.5%
3505		Dextrins and other modified starches (for example, pregelatinized or esterified starches); glues based on starches, or on dextrins or other modified starches:				
3505.10.00	00	Dextrins and other modified starches	kg	1.1¢/kg	Free (A,E)	8.8¢/kg
3505.20.00	00	Glues	kg	2.8¢/kg + 3.8%	Free (A,E)	17.6¢/kg + 25%

WRITTEN BRIEF

of

WARREN S. CLARK, JR., Executive Director

American Dry Milk Institute, Inc.
Whey Products Institute
130 N. Franklin Street
Chicago, IL 60606

TO THE

TRADE POLICY STAFF COMMITTEE

Re: Harmonized Commodity Description and Coding System

October 13, 1983

This brief is submitted on behalf of the American Dry Milk Institute and the Whey Products Institute, both located in Chicago, Illinois. These Institutes are non-profit, national trade associations, comprised of cooperative and independent manufacturers of dry milks and whey and modified whey products. The Members of the Institutes manufacture a majority of the dry milk and whey and whey products which are produced in the United States. We appreciate having this opportunity to convey our views on the document "*Conversion of the Tariff Schedules of the United States Annotated Into the Nomenclature Structure of the Harmonized System: Report on Investigation No. 332-131, Under Section 332 of the Tariff Act of 1930*" (USITC Publication 1400).

Our first comment is to acknowledge the obvious tremendous volume of work that has been done to prepare this document as well as to convey appreciation to those persons who have performed so diligently to bring it to this phase of its development. Our views are extended at this time in order to convey the areas where we have questions, or are uncertain, about portions of the new converted system as it relates to dairy products within the scope of activity of our associations -- dry milk and dry whey products. These involve the headings 0402, 0403, 0404, 3501 and 3502. We also wish to take this opportunity to advise the Committee of the status of a domestic interested party petition which is pending before the U.S. Customs Service regarding a TSUS reclassification of the dairy products Total Milk Proteinate, Whey Protein Concentrate and Lactalbumin.

Heading 0402

As we interpret this heading, and the various sub-sections and statistical suffixes thereof, our specific industry products nonfat dry milk and dry whole milk are included. These currently are reflected by TSUS items 115.50 and 115.55, respectively. We understand that the quotas now in existence for these products will continue unchanged.

Heading 0403

Dry buttermilk, currently reflected as TSUS item 115.45, falls within this category. The existing quota of 496,000#, which includes imports of both dry buttermilk and dry whey, we understand will remain in effect, unchanged except for the conversion to/expression in metric units.

Heading 0404

Under this heading, dry whey is categorized as 0404.10.40. The current TSUS item for this product is 118.05. Again, we assume the existing quota of 496,000# (which includes both dry whey and dry buttermilk) will continue in effect.

We respectfully request that the article description as reflected by the statistical suffix 0404.10.40.20 be changed by deleting the first word, "NOT". It is not common, and indeed rare, for dry whey to contain "added sugar or other sweetening matter." Therefore, the further subordinate subdivision created for the purpose of meeting national tariff or statistical needs should reflect the uncommon or exceptional product rather than that product normally manufactured and distributed by the industry.

Modified whey products, as defined by a Common and Usual Name regulation and affirmed by the Food and Drug Administration as generally recognized as safe (GRAS), of Reduced Lactose Whey, Reduced Minerals Whey and Whey Protein Concentrate we understand to be included within the headings of either 0404.10.40 or 0404.90.00.

The whey-derived product, Lactalbumin, also should be included within the headings 0404.10.40 and/or 0404.90.00, since such product represents a concentrated form of whey protein obtained by removal of lactose and minerals — a further

processing step in the manufacture of Reduced Lactose Whey, Reduced Minerals Whey, and Whey Protein Concentrate. The enclosures to this brief, intended as a part thereof, further explain the rationale for this classification.

Heading 3501

This heading includes designations of 3501.10 and 3501.90, which appear to reflect existing TSUS items 493.12 (casein) and 493.14 (other), respectively. At this time we have no further comments thereon.

Heading 3502

As already noted, Lactalbumin, the high-protein whey product logically belongs in Chapter 4, under heading 0404. Inclusion under heading 3502.90.00 will not allow the development of necessary statistical data about the product. Accordingly, if included herein, a separate statistical suffix is requested, as exists for egg albumin. Once again, the enclosures to this brief clearly indicate the logical basis for this position.

Excluded Product

Total Milk Proteinate (TMP) is a soluble milk proteinate in which casein and undenatured whey protein (albumins) are isolated as a single protein complex from fresh skim milk. The proportions of the protein fractions are identical to those normally found in milk. (Enclosed is technical literature describing this new product.) In view of the fact that TMP is derived from skim milk and essentially is such product in a highly concentrated form, specific provision should be made for its inclusion in the new tariff classification system. It appears this product should be included under heading 0402.29.00 and we urge that the explanatory notes clearly define the product accordingly.

- * -

Includes three (3) enclosures.

E (KIKA) DE LA GARZA, TEXAS
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U.S. House of Representatives
Committee on Agriculture
Room 1301, Longworth House Office Building
Washington, DC 20515

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January 29, 1987

RECEIVED
FEB 11 1987
SUBCOMMITTEE ON TRADE

The Honorable Sam Gibbons
Chairman
Subcommittee on Trade
House Committee on Ways and Means
1136 Longworth Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed for your review and consideration is correspondence I recently received from Dr. Warren S. Clark of the American Dairy Products Institute, Chicago, Illinois. Dr. Clark is requesting changes in the tariff schedules of the United States for certain dairy products.

With warm regards, I am

Sincerely,

E (Kika) de la Garza
Chairman

cch

Enclosure

THE CORRESPONDENCE REFERRED TO IS IDENTICAL TO THE MATERIAL PRECEDING THIS LETTER AND IS NOT REPEATED HERE.--Ed.

American Paper Institute, Inc.
1250 Connecticut Avenue, NW, Suite 210
Washington, DC 20036 • (202) 463-2420

March 12, 1987

Mr. Joseph K. Dowley
Chief Counsel
House Ways & Means Committee
1102 Longworth Building
Washington, DC 20515

Dear Mr. Dowley:

The American Paper Institute (API) is the national trade association representing companies that account for over 90% of U.S. production of pulp, paper and paperboard. In 1986, the paper and allied products industry's shipments were valued at more than $109 billion.

The API has strongly supported the development of the Harmonized System (HS). As an internationally competitive industry, the U.S. paper industry would greatly benefit from an international uniform system of product classification and definitions. **However, our support was linked to the expectation that other countries would adopt the structure and definitions of the HS in their entirety, without trade distorting amendments.** API now awaits the outcome of the negotiations with the EC in Geneva on the conversion, which includes the issue of kraft definitions, before determining the industry's position on the adoption of the Harmonized System.

The European Community's (EC) current definition of "kraft" restricts the amount of hardwood fiber that can be used for kraft paper and paperboard by requiring that at least 80 percent of the fiber content be of softwood pulp. U.S. kraft exporters which do not meet this requirement now face a 9 percent duty in the EC, three percentage points higher than the six percent duty agreed upon during the Tokyo Round.

What makes the EC kraft definition particularly objectionable is that technological changes have made any distinction based on fiber type irrelevant in terms of the quality of the product. Recognizing this fact, all parties in the Harmonized System Committee of the Customs Cooperation Council (CCC), including the EC, agreed in 1978 to drop the softwood requirement and substitute certain quality requirements intended to maintain the performance characteristics of kraft products. These requirements were acceptable to the U.S. industry.

The Committee should be aware that the kraft definition was the subject of U.S.-EC negotiations during the Tokyo Round of Multilateral Trade Negotiations (MTN). At the end of the MTN, in an exchange of letters between Commissioner Etienne Davignon and the Deputy Special Trade Representative Alonzo McDonald, the Commission stated that it will endeavor to promptly resolve the kraft definition problem in the U.S. favor. This, however was not accomplished and on several occasions officials of the Commission indicated to the U.S. government and to the U.S. paper industry that this question will be positively resolved at the latest when the new Harmonized System is adopted. We believe, therefore, that this problem with the EC goes beyond the question of technical conversion.

It now appears that the EC has no intention of living up to its assurances. While adopting the HS definition of kraft, the EC has retained the restriction based on fiber content by subdividing in a separate annex those kraft products with more than 80% softwood fiber -- at 6% duty -- and retaining the 9% duty for those kraft products with less than 80% softwood content.

The practical impact of this is very real and very damaging to U.S. interests. Some highly competitive mills producing kraft linerboard -- the inner and outer facing of corrugated boxes -- have been prevented from exporting to the EC at great economic cost. Others, while still exporting certain other kraft products, such as uncoated bleached paperboard and saturating kraft, are facing serious competitive problems because of the higher duty. Our competitors, the Nordic countries and Brazil, are not required to meet this restrictive definition since their products enter the EC duty free regardless of fiber content.

The API has urged the U.S. Trade Representative to make resolution of this problem a top priority in the on-going Harmonized System negotiations in Geneva with the EC. When this issue is resolved, the U.S. paper industry will wholeheartedly support adoption of the Harmonized System by the United States.

Sincerely,

Irene Meister

Irene W. Meister
Vice President, International

BEFORE THE
TRADE SUBCOMMITTEE OF THE
HOUSE WAYS AND MEANS COMMITTEE

STATEMENT OF
THE AMERICAN PIPE FITTINGS ASSOCIATION
ON THE PROPOSED CONVERSION OF THE
TARIFF SCHEDULES OF THE UNITED STATES INTO THE
HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM

(February 27, 1987)

This Statement responds to the January 12, 1987 notice of the Trade Subcommittee, soliciting the views of interested parties on the Third Draft Conversion of the Tariff Schedules to the Harmonized System ("Third Draft Conversion"), which was published by the Trade Policy Staff Committee of the Office of the United States Trade Representative in October 1986.

The American Pipe Fittings Association ("APFA") represents domestic manufacturers of iron and steel pipe fittings and other piping components and accessories. Its more than 30 member companies operate in every region of the United States.

Because many of its members are affected by competing imports, APFA has a vital interest in the clarity, administration and statistical utility of the product categories concerned. APFA believes that developing a harmonized system of tariff nomenclature is a worthwhile exercise. There is cause for concern, however, that the interests of small domestic industries, which may not have technical expertise on this complex subject, may be overlooked. This is particularly important where import-impacted industries are concerned. To permit such industries to invoke their trade remedies, accurate and useful import statistics are necessary, something that is not always available under the current statistical categories, a number of which are overly broad. Accordingly, APFA recommends that a statement of policy be included in the implementing legislation, encouraging statistical breakouts where necessary to provide meaningful trade data for interested industries.

In general, the Third Draft Conversion represents an improvement over the Tariff Schedules insofar as organization is concerned. For example, "Ductile fittings" under the Harmonized System (Heading 7307.19.30) are subsumed under the "Cast fittings" grouping, whereas that description is subsumed under "Other fittings" under the Tariff Schedules (Item 610.82). Since ductile iron fittings are cast fittings, the Harmonized System version makes better sense. Further, Heading 7307.19.30 of the Draft Harmonized System reflects a consolidation of the "advanced" and "not advanced" categories for cast malleable iron fittings in Items 610.70 and 610.74 of the Tariff Schedules. The Draft Harmonized system also eliminates a separate category for alloy cast iron fittings under Item 610.71 of the Tariff Schedules. We regard these changes as salutory.

There are, however, several anomalies and other defects in the Third Draft Conversion which APFA believes should be corrected as part of the legislative process, as follows:

1. Headings 7307.11.30 and 7307.11.90 should be consolidated at a trade-weighted average rate.

Both categories apply to nonmalleable cast iron fittings that are essentially identical in their physical characteristics (dimensions, materials, etc.). A distinction based on intended use -- for cast iron pipe or not for cast iron pipe as in the Tariff Schedules -- is therefore meaningless in a commercial sense. Indeed, the U.S. Customs Service does not and cannot enforce that distinction. Consequently, those two classifications should be combined for purposes of simplicity and administrative convenience into a single classification covering fittings of nonmalleable cast iron only. In keeping with standard methodology, a single rate, based on the trade-weighted average for the three-year period, 1981-1983, should be 4.8% under column 1.*/ The same method would be used to arrive at a blended column 2 rate.

2. There should be a separate provision for cast fittings "Of malleable cast iron" indented under Heading 7307.19 of the Draft Harmonized System.

Malleable iron pipe fittings are an important product in trade and should, therefore, be accorded separate treatment as they are in the Tariff Schedules.

3. The product description under Headings 7307.21.10 and 7307.91.10 and -.30 should be modified by adding the phrase "after forging" at the end of the qualification "Not machined, not tooled and not otherwise processed".

By way of precedent, the Tariff Schedules contain a provision for "forgings of iron or steel" (Items 606.71, 606.73) which is qualified by the full phrase "Not machined, not tooled and not otherwise processed after forging".

4. The product description for "Other" fittings under Headings 7307.99.10 and -.30 should be modified by the addition of the phrase "after forming or forging" at the end of the qualification "Not machined, not tooled and not otherwise processed".

While forging may be regarded as a forming process, not every fitting that might fall under this category is initially shaped by forging. Therefore, the phrase "forming or forging" is used to avoid confusion.

Appendix A hereto sets forth the suggested language to reflect the above recommendations, including suggested statistical breakouts for the tariff categories applicable to pipe fittings.

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*/ The blended rate, 4.8% is a trade-weighted average of the 5.8% rate under Item 610.62 and the 2.5% rate under Item 610.65, based on the methodology in the International Trade Commission's Submitting Report, Inv. No. 332-131, USITC Pub. 1400 (June 1983) at pp. 31-33. Imports for the 1981-1983 period under Item 610.62 totaled $12.91 million; imports under Item 610.65 over the same period were $5.86 million.

Appendix A

PROPOSED CONVERSION OF THE TARIFF SCHEDULES

INTO THE HARMONIZED SYSTEM

Heading	Stat. Suffix	Article Description	Rates of Duty 1 General
7307		Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel:	
		Cast fittings:	
7307.11.00		Of nonmalleable cast iron[:]	4.8%
[7307.11.30]		[For cast iron pipe]	[5.8%]
	[30]	[For cast iron soil pipe]	
	[90]	[Other]	
[7307.11.90]		[Other]	[2.5%]
	[30]	[For threaded pipe]	
	[90]	[Other]	
	30	For cast iron soil pipe	
		Other:	
	60	With an inside diameter of less than 76 mm	
	90	With an inside diameter of 76 mm or more	
7307.19		Other:	
7307.19.10		Of malleable cast iron	6.2%
		With an inside diameter of less than 76 mm	
	10	Threaded, except unions	
	15	Grooved	
	20	Unions	
	60	Other	
		With an inside diameter of 76 mm or more	
	70	Threaded	
	75	Grooved	
	80	Other	
7307.19.30	[00]	Ductile fittings	6.2%
		With an inside diameter of less than 76 mm	
	10	Threaded, except unions	
	15	Grooved	
	20	Unions	
	60	Other	
		With an inside diameter of 76 mm or more	
	70	Threaded	
	75	Grooved	
	80	Other	

Note: New material is indicated by underlining, while deleted material is indicated by brackets.

Heading	Stat. Suf-fix	Article Description	Rates of Duty 1 General
7307 (con.)		Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel (con.):	
		Cast fittings (con.):	
		Other (con.):	
7307.19.90	00	-- Other	6.2%
	[30]	[Unions]	
	[90]	[Other]	
		Other, of stainless steel:	
7307.21		Flanges:	
7307.21.10	00	Not machined, not tooled and not otherwise processed after forging	4.1%
7307.21.50	[00]	Other	6.2%
	30	With an inside diameter of less than 360 mm	
	90	With an inside diameter of 360 mm or more	
7307.22.00		Threaded elbows, bends and sleeves	6.2%
	10	Sleeves (couplings)	
	50	Other	
7307.23.00	[00]	Butt welding fittings	6.2%
	30	Not machined, not tooled and not otherwise processed after forming	
		Other	
	60	With an inside diameter of less than 360 mm	
	90	With an inside diameter of 360 mm or more	
7307.29.00	00	Other	6.2%
		Other:	
7307.91		Flanges:	
		Not machined, not tooled and not otherwise processed after forging:	
7307.91.10	00	Of iron or nonalloy steel	4.2%
7307.91.30	00	Of alloy steel (except stainless steel)	4%
7307.91.50		Other	6.2%
		With an inside diameter of less than 360 mm:	
	10	Of iron or nonalloy steel	
	30	Of alloy steel (except stainless steel)	
		With an inside diameter of 360 mm or more:	
	50	Of iron or nonalloy steel	
	70	Of alloy steel except stainless steel)	

Heading	Stat. Suf-fix	Article Description	Rates of Duty General
7307 (con.)		Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel (con.):	
		Other (con.):	
7307.92		-- Threaded elbows, bends and sleeves:	
7307.92.30		Sleeves (couplings)	6.2%
	10	Of iron or nonalloy steel	
	30	Of alloy steel (except stainless steel)	
7307.92.90	00	Other	6.2%
7307.93		Butt welding fittings:	
		With an inside diameter of less than 360 mm:	
7307.93.30	[00]	Of iron or nonalloy steel	6.2%
	30	Not machined, not tooled and not otherwise processed after forming	
	90	Other	
7307.93.60	[00]	Of alloy steel (except stainless steel)	6.2%
	30	Not machined, not tooled and not otherwise processed after forming	
	90	Other	
7307.93.90		With an inside diameter of 360 mm or more	6.2%
	[30]	Of iron or nonalloy steel	
	30	Not machined, not tooled and not otherwise processed after forming	
	50	Other	
	[60]	Of alloy steel (except stainless steel)	
	70	Not machined, not tooled and not otherwise processed after forming	
	90	Other	
7307.99		Other:	
		Not machined, not tooled and not otherwise processed after forming or forging:	
7307.99.10	00	Of iron or nonalloy steel	4.2%
7307.99.30	00	Of alloy steel (except stainless steel)	4%
7307.99.50		Other	6.2%
	[30]	[Of iron or nonalloy steel]	
	[60]	[Of alloy steel (except stainless steel)]	
		Socket weld or threaded	
	30	Of iron or nonalloy steel	
	60	Of alloy steel (except stainless steel)	
	90	Other	

Heading	Stat. Suf-fix	Article Description	Rates of Duty 1 General
		--	
		• • •	
7412		Copper tube or pipe fittings (for example, couplings, elbows, sleeves):	
7412.10.00	[00]	Of refined copper	11.2%
	30	Threaded	
	90	Other	
7412.20.00	[00]	Of copper alloys	3.2%
		Brass	
	30	Threaded	
	50	Other	
		Other	
	70	Threaded	
	90	Other	

4086A

PHILLIPS, LYTLE, HITCHCOCK, BLAINE & HUBER

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February 27, 1987

FEDERAL EXPRESS

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Longworth House Office Building
Room 1102
Washington, DC 20515

Re: Customs Classification
Proposed Conversion of TSUS to the
Nomenclature of Harmonized System
Written Comments

Dear Mr. Dowley:

On behalf of our firm's clients, Bay Mills Limited, Bayex Division of St. Catharines, Ontario, Canada ("Bayex-Canada") and its U.S. affiliate, Bayex Inc. of Albion, New York ("Bayex-US"), we submit these comments in connection with the congressional review of the proposed conversion of the Tariff Schedules of the United States ("TSUS") into the nomenclature structure of the Harmonized Commodity Description and Coding System ("HS").

Our clients generally support the conversion effort if it is accomplished without a significant change in the current rates of duty applied to the class or kind of products manufactured by our clients. However, we wish to advise the House committees about the difficulties and uncertainties our clients have experienced in trying to make sure the conversion will in fact be a duty neutral one. In general, Bayex-Canada has been trying for the past four years through written comments, public testimony and follow-up discussions with the various U.S. government agencies (i.e., International Trade Commission, Office of the U.S. Trade Representative, U.S. Customs Service) to resolve a very specific duty problem (a potential duty increase from 3.4% to 17%). To date, a satisfactory resolution has not been obtained. Furthermore, a recent attempt by the U.S. government

to address the problem may inadvertently decrease the rate of duty (from approximately 18% to 3.4%) on imported fabric which competes directly with fabric manufactured in New York State by Bayex-US.

Bayex-Canada and Bayex-US are manufacturers of certain textile scrim fabrics. In general terms, these fabrics consist of the combination of textile fiber yarns (usually man-made) with an open mesh construction from a crenette loom and a plastic material which is applied to the yarns. After years of uncertainty in the mid-1970's concerning the proper U.S. Customs classification of this fabric, a Customs ruling was issued in July 1977 (through Congressman John LaFalce's office) establishing alternative classifications - under Item 359.50, TSUS for those fabrics in chief value of the textile yarns or Item 359.60, TSUS, for those fabrics in chief value of the plastics material. (A copy of the ruling is attached for your information and reference.) The applicable rates of duty for these two tariff provisions have always varied by a very significant margin - currently Item 359.50 carries a compound rate of 3¢ per pound and 18% ad valorem while Item 359.60 carries an ad valorem rate of 3.4%. Because of this significant variation, the Bayex business has during the past ten years evolved to a general situation where Bayex-Canada manufactures in Canada the finished fabrics subject to classification under Item 359.60 while Bayex-US manufactures in New York the finished fabrics which would be subject to classification under Item 359.50.

Under the current TSUS (as discussed in the July 1977 Customs ruling) the crenette scrim fabric is not a woven fabric; it is classified only as an "other" textile fabric. However, under the HS conversion (in provisions already agreed to by the United States at the international level), the crenette scrim fabric will be a woven fabric (by operation of Note 9 in Section XI of the HS and Item 5407.30.00 in Chapter 54). Presently, customs classification systems based on the Customs Cooperation Council Nomenclature (i.e. Western Europe, Australia) treat the crenette scrim fabric as a woven fabric.

Bayex-Canada initially brought this HS classification change to the attention of the U.S. government in October 1983 (written comments) and November 1983 (public testimony in New York City). Despite numerous follow-up efforts and discussions

since 1983, the proposed HS conversion does not yet satisfactorily resolve the classification and duty problems which may significantly and adversely impact on the business of both Bayex-Canada and Bayex-US. Under the current edition of the proposed HS conversion one Bayex entity will be very seriously injured - because the present conversion fails to maintain the significant duty variation presently existing in the TSUS between Item 359.50 and Item 359.60. In supplemental comments dated February 24, 1987, we have proposed a resolution of this problem to the U.S. government (a copy of the comments is attached, along with a copy of pertinent portions of the HS conversion).

In view of the technical and complex nature of the issues in this matter, we will gladly provide any additional information you may require to clarify the concerns and problems of our clients. However, we believe the House committees should be aware that despite regular and persistent efforts by our clients during the past four years through the normal administrative channels set up by the U.S. government on this matter, we have been unable to date to resolve a very specific problem involving an approximate 500% fluctuation in the existing rates of duty on the products of our clients.

Please contact our firm if you have any questions or require any additional information.

Very truly yours,

PHILLIPS, LYTLE, HITCHCOCK, BLAINE & HUBER

By James Meagley

James G. Meagley
Direct Dial (716)847-7006

DAme

cc: Bayex
Congressman John J. LaFalce
U.S. Customs - P. Giguere
ITC - E. Rosengarden
L. Clayton
USTR - Trade Policy Staff Committee

JUL 19 1977

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[Sent to Congressman LaFalce on behalf of Bayer]

This is in reply to your letter of June 3, 1977, on behalf of concerning the tariff classification of crenette cloth manufactured in Canada.

Crenette cloth is an unconventional fabric that is formed by alternately passing the filling yarn on one side of all of the warp yarns and then on the other side. The essential characteristic of crenette and similar products is that the warp and filling yarns are not interlaced but are bonded at their intersections.

The manufacturer contends that crenette cloth should, when imported in material lengths, be classifiable under the provisions in the tariff schedules for woven fabrics instead of under the provisions for fabrics not specially provided for. The reasons advanced for this contention are (1) that there exists an established and uniform practice to classify crenette cloth as woven fabric, and (2) that crenette cloth, which is made on a crenette loom, is, in fact, a woven fabric, as evidenced by the Brussels Tariff Nomenclature (BTN) which specifically includes this type of fabric under woven fabrics.

We are unable to locate any authority, other than the BTN, which supports the classification of this merchandise as a "woven" fabric. In this regard, we note that the BTN, while classifying the subject merchandise under the provision for woven fabrics, does not refer to it as a "woven fabric." Rather, it is described as a mesh scrim made by turbo-weaving.

For your information, the portion of the BTN which describes crenette-type fabrics and states that they are classifiable as woven fabrics was not inserted in the BTN until 1968. The working documents to the BTN covering that change specifically state that prior to the change in 1968, such fabrics would not have been classified as woven fabrics. Thus, at the time the tariff schedules were drafted and enacted, crenette cloth was not considered to be a woven fabric by any authority of which we are aware.

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Attached as an annex is a list of authorities that we have consulted. It is interesting that none of these authorities contains any reference to crenette cloth, crenette looms, or turbo-weaving, nor is there any mention of a fabric similar to crenette cloth being considered a woven fabric. Every definition of a woven fabric includes the requirement that the fabric be made from two yarn systems (usually called the warp and the filling) which are interlaced. In crenette fabric there is no interlacing.

The Customs Service has not been uniform in its rulings and classification concerning the instant merchandise. Due to the manner of the construction of crenette cloth, it is quite easy to mistake that cloth for a woven fabric. This is undoubtedly one of the reasons behind the conflicting classifications.

However, we do note that our ruling of August 15, 1972, classifying certain merchandise (which on further examination is crenette cloth) under the provision for nonwoven fabrics, in item 359.25, TSUS, is clearly in conflict with the statutory definition of nonwoven fabrics contained in Headnote 2(b), Part 4C, Schedule 3, TSUS. That headnote provides that nonwoven fabrics are fabrics made from matted textile fibers which are not in the form of yarns. Obviously, crenette is not within the purview of nonwoven fabrics.

What appears to be a conflict in our classification rulings between items 359.50 and 359.60, TSUS, is actually classification of the merchandise according to its component material of chief value. In some instances, the merchandise is subjected to a bath in liquid plastics after it comes out of the loom. The plastics material completely surrounds the yarns and binds them in place, forming the fabric. Item 359.50 provides for textile fabrics not specially provided for, in chief value of man-made fibers. Item 359.60 covers fabrics not specially provided for, which are not in chief value of either vegetable fibers, wool, silk, or man-made fibers. Accordingly, if the value of the man-made fiber yarns exceeds the value of the plastics, the fabric is "of man-made fibers" and classifiable under item 359.50. If the value of the plastics material exceeds the value of the man-made fiber yarns, then the fabric is not of "man-made fibers" and is, therefore, not classifiable in item 359.50. Obviously, therefore, the classification of this type of crenette fabric is dependent on both the value of the plastics binding material and the amount of that material. While some of these fabrics contain relatively small amounts of plastics material and would not be in chief value of that material, some contain large amounts and may be in chief value of the plastics material.

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We have investigated and determined that an established and uniform practice of classification does not exist with respect to this merchandise. We have surveyed most ports of entry where crenette cloth would probably be imported. Only three ports report shipments of this merchandise; Cleveland, where the single entry covering the one shipment that arrived at that port remains unliquidated; Detroit, where the district director has reported that shipments of crenette cloth have been entered at that port since 1973 and that the merchandise, which was found to be in chief value of plastics materials, was classified in item 359.60; and Buffalo, where the district director reported that while many entries covering crenette cloth were liquidated as woven fabrics, other entries were liquidated in item 359.50. The District Director, Buffalo, also reported that the manufacturer of crenette cloth was advised in writing on May 26, 1972, in response to its inquiry, that a submitted sample of crenette cloth was classifiable in item 359.50.

In view of the foregoing we are of the opinion that crenette fabric is not a woven fabric as that term is used in the industry and commerce of this country and that there is no available evidence that crenette cloth was intended to be classifiable as a woven fabric by the drafters of the tariff schedules. Accordingly, we adhere to our prior rulings that crenette cloth is classifiable as a textile fabric not specially provided for, in either item 359.50 or item 359.60, depending on the component material of chief value. However, in view of Customs inconsistent treatment of this merchandise, we are instructing our ports to liquidate all pending entries of crenette cloth under the provisions for woven fabrics. Crenette cloth imported after the date of this letter will be classified in either item 359.50 or item 359.60.

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If we can be of further assistance in this matter, please call on us.

Sincerely yours,

(Signed) Salvatore R. Canamucio

for Leonard Lehman
Assistant Commissioner
Regulations and Rulings

Enclosure

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PHILLIPS, LYTLE, HITCHCOCK, BLAINE & HUBER

ATTORNEYS AT LAW

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February 24, 1987

FEDERAL EXPRESS

Office of U.S. Trade Representative
Room 521
600 17th Street, NW
Washington, DC 20506

Att: Carolyn Frank, Secretary
Trade Policy Staff Committee

Re: Harmonized System
Written Comments - BAY MILLS LTD.
Heading 5903

SUPPLEMENTAL TO COMMENTS DATED 2/4/87

Gentlemen:

On behalf of our firm's client, Bay Mills Limited, Bayex Division of St. Catharines, Ontario, we submit these supplemental comments to our initial comments dated February 4, 1987, in connection with the third edition of the proposed conversion of the Tariff Schedules of the United States ("TSUS") into the nomenclature structure of the Harmonized Commodity Description and Coding System ("HS").

SUPPLEMENTAL ISSUE # 1

Item 5903.10.15, HS, as presently drafted will most likely cover textile scrim fabrics currently classified under Item 359.50, TSUS, 3¢ per lb and 18% ad valorem as well as Item 359.60, TSUS, 3.4% ad valorem. One basic difference in these fabrics is the amount of plastics material applied to the textile yarns. Thus, while Item 5903.10.15 attempts to resolve our client's problem concerning fabrics classified under Item 359.60, it offers a substantial rate reduction (approximately 1/5 of the current tariff) to importers of fabrics classified under Item 359.50. This rate reduction will have a drastic and

very negative impact on U.S. industry currently producing such fabrics, including an affiliate of our client.

In order to preserve the existing rates of duty currently applied to this class or kind of scrim fabric, we believe some distinction must be made based on the weight of the plastics material involved. We have been proposing for four years that a 60% weight factor be used (in connection with break-outs under Heading 5407). In general, scrim fabrics manufactured by Bayex which are more than 60% by weight of plastics are in chief value of plastics and classified under Item 359.60. Scrim fabrics of Bayex which are less than 60% by weight of plastics are usually in chief value of the textile yarn (i.e. man made fibers) and classified under Item 359.50. The 70% weight factor in Item 5903.10.20 and similar items is too high to cover our client's class or kind of scrim fabric.

SUPPLEMENTAL ISSUE # 2

Item 5903.10.15 affords the 3.4% ad valorem rate only to certain textile fabrics made "with polyvinyl chloride." Currently, Item 359.60 makes no distinction as to the type of plastics material used on fabrics. Although our client's fabric currently uses a "polyvinyl chloride" material, existing technology would allow (and Bayex has been testing) the use of other plastics materials, such as polyvinyl acetate and polyethylene. It is quite likely that such plastics materials will be used on scrim fabrics in the future by Bayex. Under the TSUS, regardless of the plastics materials used, the fabrics would qualify for the 3.4% ad valorem rate if in chief value of plastics. The same general treatment should be preserved under the HS; the 3.4% rate should not be limited under the HS to the use of polyvinyl chloride.

SUPPLEMENTAL REQUEST

The "man-made fiber" provisions under Heading 5903 must preserve the existing rates of duty currently applied to fabrics classified under Item 359.50 and Item 359.60. Since the Sub-Headings (i.e. 5903.10, 5903.20 and 5903.90) under Heading 5903 depend on the plastics materials involved, each man-made fiber section under each sub-heading must contain two eight digit items under a provision for "Fabrics specified in note 9 to section XI." We request, therefore, that Heading 5903 and its inferior provisions be re-written in the format as stated in Exhibit A to this letter.

OUR PRIOR REQUEST

As we have been requesting during the past four years, two eight digit provisions must be established under Heading 5407 in order to preserve the existing rates of duty currently applied under Items 359.50 and Item 359.60. We request, therefore, that Heading 5407 be re-written as stated in Exhibit B to this letter. This is necessary because the current TSUS classification of scrim fabrics under Items 359.50-359.60 does not depend on the issue of "coating." As stated in our February 4th comments, we are not entirely convinced that U.S. Customs will conclude under the HS that our fabric is "coated" for tariff purposes. It is essential, therefore, that Heading 5407 differentiate between the current duty rates applied under Item 359.50 and Item 359.60 in the event that a conclusion is reached that our fabric is not "coated."

* * * *

We will gladly provide any additional information required in connection with this matter. We appreciate the consideration being given by the U.S. government to these issues. The complexity of the issues and the basic changes in tariff structure and language under the HS, however, require that further attention be given to our client's concerns in order to resolve unintended duty problems which still exist under the HS conversion.

Very truly yours,

PHILLIPS, LYTLE, HITCHCOCK, BLAINE & HUBER

By James Meagley

James G. Meagley

DAme

Enclosures

cc: Bay Mills - Bayex
ITC: E. Rosengarden
L. Clayton
Customs: P. Giguere

Exhibit A

Heading	Article Description	General Rate of Duty
5903	Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902:	
5903.10	With polyvinyl chloride:	
5903.10.10	Of cotton	5.3%
	Of man-made fibers: Fabrics specified in note 9 to Section XI	
5903.10.15	Over 60% by weight of plastics	3.4%
5903.10.18	Other	18%
	Other:	
5903.10.20	Over 70 percent by weight of rubber or plastics	4.2%
5903.10.25	Other	8.5%
5903.10.30	Other	5.3%
5903.20	With polyurethane:	
5903.20.10	Of cotton	5.3%
	Of man-made fibers: Fabrics specified in note 9 to Section XI	
5903.20.15	Over 60% by weight of plastics	3.4%
5903.20.18	Other	18%
	Other	
5903.20.20	Over 70 percent by weight of rubber or plastics	4.2%
5903.20.25	Other	8.5%
5903.20.30	Other	5.3%
5903.90	Other:	
5903.90.10	Of cotton	5.3%
	Of man-made fibers: Fabrics specified in note 9 to Section XI	
5903.90.15	Over 60% by weight of plastics	3.4%
5903.90.18	Other	18%
	Other	
5903.90.20	Over 70 percent by weight of rubber or plastics	4.2%
5903.90.25	Other	8.5%
5903.90.30	Other	5.3%

Exhibit B

Heading	Article Description	General Rate of Duty
5407	Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404:	
	* * *	
5407.30	Fabrics specified in note 9 to Section XI	
5407.30.10	Over 60% by weight of plastics	3.4%
5407.30.90	Other	17%

TRADE POLICY STAFF COMMITTEE
OFFICE OF THE U.S. TRADE REPRESENTATIVE
WASHINGTON, D.C. 20506

CONVERSION OF THE TARIFF SCHEDULES OF THE UNITED STATES INTO THE NOMENCLATURE STRUCTURE OF THE HARMONIZED SYSTEM, REVISED, SHOWING ADMINISTRATIVE CHANGES APPROVED BY THE TRADE POLICY STAFF COMMITTEE

OCTOBER 1986

** [highlight references to Bayex provisions

TARIFF SCHEDULE OF THE UNITED STATES ANNOTATED

(Converted to the Harmonized System and reflecting final MTN concession rates of duty)

SECTION XI

TEXTILES AND TEXTILE ARTICLES

Notes

1. This section does not cover:

   (a) Animal brush-making bristles or hair (heading 0502); horsehair or horsehair waste (heading 0503);

   (b) Human hair or articles of human hair (heading 0501, 6703 or 6704), except straining cloth of a kind commonly used in oil presses or the like (heading 5911);

   (c) Cotton linters or other vegetable materials of chapter 14;

   (d) Asbestos of heading 2524 or articles of asbestos or other products of heading 6812 or 6813;

   (e) Articles of heading 3005 or 3006 (for example, wadding, gauze, bandages and similar articles for medical, surgical, dental or veterinary purposes, sterile surgical suture materials);

   (f) Sensitized textiles of headings 3701 to 3704;

   (g) Monofilament of which any cross-sectional dimension exceeds 1 mm or strip or the like (for example, artificial straw) of an apparent width exceeding 5 mm, of plastics (chapter 39), or plaits or fabrics or other basketware or wickerwork of such monofilament or strip (chapter 46);

   (h) Woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39;

   (ij) Woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with rubber, or articles thereof, of chapter 40;

   (k) Hides or skins with their hair or wool on (chapter 41 or 43) or articles of furskin, artificial fur or articles thereof, of heading 4303 or 4304;

   (l) Articles of textile materials of heading 4201 or 4202;

   (m) Products or articles of chapter 48 (for example, cellulose wadding);

   (n) Footwear or parts of footwear, gaiters or leggings or similar articles of chapter 64;

   (o) Hair-nets or other headgear or parts thereof of chapter 65;

   (p) Goods of chapter 67;

   (q) Abrasive-coated textile material (heading 6805) and also carbon fibers or articles of carbon fibers of heading 6815;

   (r) Glass fibers or articles of glass fibers, other than embroidery with glass thread on a visible ground of fabric (chapter 70);

   (s) Articles of chapter 94 (for example, furniture, bedding, lamps and lighting fittings); or

   (t) Articles of chapter 95 (for example, toys, games, sports requisites and nets).

2. (A) Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material.

   (B) For the purposes of the above rule:

   (a) Gimped horsehair yarn (heading 5110) and metalized yarn (heading 5605) are to be treated as a single textile material the weight of which is to be taken as the aggregate of the weights of its components; for the classification of woven fabrics, metal thread is to be regarded as a textile material;

   (b) The choice of appropriate heading shall be effected by determining first the chapter and then the applicable heading within that chapter, disregarding any materials not classified in that chapter;

   (c) When both chapters 54 and 55 are involved with any other chapter, chapters 54 and 55 are to be treated as a single chapter;

   (d) Where a chapter or a heading refers to goods of different textile materials, such materials are to be treated as a single textile material.

   (C) The provisions of paragraphs (A) and (B) above apply also to the yarns referred to in notes 3, 4, 5 or 6 below.

5. For the purposes of headings 5204, 5401 and 5508, the expression "sewing thread" means multiple (folded) or cabled yarn:

   (a) Put up on supports (for example, reels, tubes) of a weight (including support) not exceeding 1,000 g;

   (b) Dressed; and

   (c) With a final "Z" twist.

6. For the purposes of this section, the expression "high tenacity yarn" means yarn having a tenacity, expressed in cN/tex (centinewtons per tex), greater than the following:

   Single yarn of nylon or other polyamides, or of polyesters.....60 cN/tex

   Multiple (folded) or cabled yarn of nylon or other polyamides, or of polyesters.....53 cN/tex

   Single, multiple (folded) or cabled yarn of viscose rayon.....27 cN/tex.

7. For the purposes of this section, the expression "made up" means:

   (a) Cut otherwise than into squares or rectangles;

   (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, curtain fastors, towels, tablecloths, scarf squares, blankets);

   (c) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics, the cut edges of which have been prevented from unravelling by whipping or by other simple means;

   (d) Cut to size and having undergone a process of drawn thread work;

   (e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded); or

   (f) Knitted or crocheted to shape, presented in the form of a number of items in the length.

8. Chapters 50 to 55 and, except where the context otherwise requires, chapters 56 to 60, do not apply to goods made up within the meaning of note 7 above. Chapters 50 to 55 do not apply to goods of chapters 56 to 60.

9. The woven fabrics of chapters 50 to 55 include fabrics consisting of layers of parallel textile yarns superimposed on each other at acute or right angles. These layers are bonded at the intersections of the yarns by an adhesive or by thermal bonding.

10. Elastic products consisting of textile materials combined with rubber threads are classified in this section.

11. For the purposes of this section, the expression "impregnated" includes "dipped."

12. For the purposes of this section, the expression "polyamides" includes "aramids."

13. Unless the context otherwise requires, textile garments of different headings are to be classified in their own headings even if put up in sets for retail sale.

Subheading Notes

1. In this section and, where applicable, throughout the tariff schedule, the following expressions have the meanings hereby assigned to them:

   (a) Elastomeric yarn

   Filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length.

   (b) Unbleached yarn

   Yarn which:

   (i) Has the natural color of its constituent fibers and has not been bleached, dyed (whether or not in the mass) or printed; or

   (ii) Is of indeterminate color ("grey yarn"), manufactured from garnetted stock.

   Such yarn may have been treated with a colorless dressing or fugitive dye (which disappears after simple washing with soap) and, in the case of man-made fibers, treated in the mass with delustering agents (for example, titanium dioxide).

(CHAPTER 54)

TARIFF SCHEDULE OF THE UNITED STATES ANNOTATED

(Converted to the Harmonized System and reflecting final MTN concession rates of duty)

54-4

Heading	Stat. Suf-fix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
5407		Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404:				
5407.10.00	00	Woven fabrics obtained from high tenacity yarn of nylon or other polyamides, or of polyesters	2/ m kg	17%		45%
5407.20.00	00	Woven fabrics obtained from strip or the like	2/ m kg	17%		45%
5407.30.00	00	Fabrics specified in note 9 to section XI	2/ m kg	18%		80.2%
		Other woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides:				
5407.41.00		Unbleached or bleached		17%		45%
	10	Suitable for making typewriter and machine ribbon, containing yarns the average denier of which exceeds 28 but not 65, the total thread count (treating multiple (folded) or cabled yarns as single threads), of which per centimeter is not less than 28 warp and 20 filling and not more than 69 warp and 53 filling and in which the thread count of the warp does not exceed 60 percent of the total thread count of the warp and filling	2/ m kg			
	50	Other: Weighing not more than 170 g/m	2/ m kg			
	90	Weighing more than 170 g/m	2/ m kg			
5407.42.00		Dyed	2/	17%		45%
	10	Weighing not more than 170 g/m	2/ m kg			
	90	Weighing more than 170 g/m	2/ m kg			

TARIFF SCHEDULE OF THE UNITED STATES ANNOTATED

(Converted to the Harmonized System and reflecting final MTN concession rates of duty)

CHAPTER 59

IMPREGNATED, COATED, COVERED OR LAMINATED TEXTILE FABRICS; TEXTILE ARTICLES OF A KIND SUITABLE FOR INDUSTRIAL USE

Notes

1. Except where the context otherwise requires, for the purposes of this chapter the expression "textile fabrics" applies only to the woven fabrics of chapters 50 to 55 and headings 5803 and 5806, the braids and ornamental trimmings in the piece of heading 5808 and the knitted or crocheted fabrics of heading 6002.

2. Heading 5903 applies to:

   (a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than:

   (1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of color;

   (2) Products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15°C and 30°C (usually chapter 39);

   (3) Products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color (chapter 39);

   (4) Fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually chapters 50 to 55, 58 or 60);

   (5) Plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (chapter 39); or

   (6) Textile products of heading 5811.

   (b) Fabrics made from yarn, strip or the like, impregnated, coated, covered or sheathed with plastics, of heading 5804.

3. For the purposes of heading 5905, the expression "textile wall coverings" applies to products in rolls, of a width of not less than 45 cm, suitable for wall or ceiling decoration, consisting of a textile surface which has been fixed on a backing or has been treated on the back (impregnated or coated to permit pasting).

   This heading does not, however, apply to wall coverings consisting of textile flock or dust fixed directly on a backing of paper (heading 4814) or on a textile backing (generally heading 5907).

4. For the purposes of heading 5906, the expression "rubberized textile fabrics" means:

   (a) Textile fabrics impregnated, coated, covered or laminated with rubber:

   (i) Weighing not more than 1,500 g/m^2; or

   (ii) Weighing more than 1,500 g/m^2 and containing more than 50 percent by weight of textile material;

   (b) Fabrics made from yarn, strip or the like, impregnated, coated, covered or sheathed with rubber, of heading 5804;

   (c) Fabrics composed of parallel textile yarns agglomerated with rubber, irrespective of their weight per square meter; and

   (d) Plates, sheets or strip, of cellular rubber, combined with textile fabric, where the textile fabric is more than mere reinforcement, other than textile products of heading 5811.

TARIFF SCHEDULE OF THE UNITED STATES ANNOTATED

(Converted to the Harmonized System and reflecting final MTN concession rates of duty)

59-3

Heading	Stat. Suf-fix	Article Description	Units of Quantity	Rates of Duty		
				1 General	1 Special	2
5901		Textile fabrics coated with gum or amylaceous substances, of a kind used for the outer covers of books or the like; tracing cloth; prepared painting canvas; buckram and similar stiffened textile fabrics of a kind used for hat foundations:				
5901.10		Textile fabrics coated with gum or amylaceous substances, of a kind used for the outer covers of books or the like:				
5901.10.10	00	Of man-made fibers	m² ....✓ kg	8%	Free (A)	74.5%
5901.10.20	00	Other	m² ....✓ kg	4.7%	Free (A,E*)	35%
5901.90		Other:				
5901.90.20	00	Of man-made fibers	m² ....✓ kg	8%	Free (A)	74.5%
5901.90.40	00	Other	m² ....✓ kg	4.7%	Free (A,E*)	35%
5902		Tire cord fabric of high tenacity yarn of nylon or other polyamides, polyesters or viscose rayon:				
5902.10.00	00	Of nylon or other polyamides	kg	6.6%		25%
5902.20.00	00	Of polyesters	kg	6.6%		25%
5902.90.00	00	Other	kg	6.6%		25%
5903		Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902:				
5903.10		With polyvinyl chloride:				
5903.10.10	00	Of cotton	m² ....✓ kg	5.3%		40%
5903.10.15	00	Of man-made fibers: Fabrics specified in note 9 to section XI	m² ....✓ kg	5.4%		40%
5903.10.20	00	Other: Over 70 percent by weight of rubber or plastics	m² ....✓ kg	4.2%	Free (A)	25%
5903.10.25	00	Other	m² ....✓ kg	8.5%		84.5%
5903.10.30	00	Other	m² ....✓ kg	5.3%	Free (E*)	40%

TARIFF SCHEDULE OF THE UNITED STATES ANNOTATED

(Converted to the Harmonized System and reflecting final MTN concession rates of duty)

Heading	Stat. Suf-fix	Article Description	Units of Quantity	Rates of Duty 1 General	Special	2
5903		Textile fabrics impregnated, coated, etc., (con.):				
5903.20		With polyurethane:				
5903.20.10	00	Of cotton	2 m ....y kg	5.3%		40%
		Of man-made fibers:				
5903.20.20	00	Over 70 percent by weight of rubber or plastics	2 m ....y kg	4.2%	Free (A)	25%
5903.20.25	00	Other	2 m ....y kg	8.5%		84.5%
5903.20.30	00	Other	2 m ....y kg	5.3%	Free (E*)	40%
5903.90		Other:				
5903.90.10	00	Of cotton	2 m ....y kg	5.3%		40%
		Of man-made fibers:				
5903.90.20	00	Over 70 percent by weight of rubber or plastics	2 m ....y kg	4.2%	Free (A)	25%
5903.90.25	00	Other	2 m ....y kg	8.5%		84.5%
5903.90.30	00	Other	2 m ....y kg	5.3%	Free (E*)	40%
5904		Linoleum, whether or not cut to shape; floor coverings consisting of a coating or covering applied on a textile backing, whether or not cut to shape:				
5904.10.00	00	Linoleum	2 m ....y kg	4.2%	Free (A,E)	25%
		Other:				
5904.91.00	00	With a base consisting of needleloom felt or nonwovens	2 m ....y kg	5%	Free (A,B,E)	40%
5904.92.00	00	With other textile base	2 m ....y kg	5%	Free (A,B,E)	40%
5905.90.00	00	Textile wall coverings	2 m ....y kg	12.5%	Free (E*)	74%

Burlington Industries, Inc.

Donald R. Hughes
Vice Chairman and
Chief Financial Officer

Corporate Offices
3330 West Friendly Avenue
P. O. Box 21207
Greensboro, North Carolina 27420
919 379-2981

February 26, 1987

Hon. Sam M. Gibbons, Chairman
Subcommittee on Trade
Committee on Ways & Means
U.S. House of Representatives
Room 1102
Longworth House Office Building
Washington, DC 20515

Attention: Joseph K. Dowley, Chief Counsel

Subject: Comment on Adoption of Harmonized System

Dear Mr. Chairman:

As an officer of a major company in an industry significantly affected by the conversion from the TSUS to the Harmonized System, I am writing to strongly endorse that conversion.

On a broad policy level, we believe it will be beneficial for the United States to have a tariff system more nearly on the pattern of the tariff systems of other major trading countries. This should have the effect of streamlining and encouraging international trade by making the U.S. tariff system more intelligible and accessible to the foreign exporters who must deal with it. It will also probably lessen the number of classification errors which may result from the lack of familiarity by foreign exporters with our, quite unique, TSUS.

In addition, we believe that the adoption of the Harmonized System will foster significant improvements in the accuracy of classifications and the utility of tariff information as they relate to the textile and apparel industry in particular.

First, the conversion to the Harmonized System will make possible a much more nearly direct correlation among import, export and production data. Under the TSUS, it is frequently impossible to relate imports to exports and production. The ability to correlate imports, exports, and production is very useful to the Government for the administration of the Multifiber Arrangement and to the industry for economic studies for many purposes.

Conversion to the Harmonized System will also resolve a problem involving textile and apparel imports which has proved extremely difficult to manage under the TSUS. This problem is the correct classification of blends such as cotton/manmade fabrics. Under the TSUS, blends are classified and assessed duty according to the fiber of chief value. This standard is very difficult to verify, since chief value is based upon costs incurred in foreign countries by parties over whom the U.S. has

CRAFTED WITH PRIDE IN USA

no jurisdiction. Moreover, there are strong incentives to misstate chief value, since this can result in very significant tariff or quota advantages.

In the Harmonized System, on the other hand, blends are classified according to the weight of their components. This is a verifiable standard, and we welcome it. We know that the transition to the Harmonized System involves a short term cost for our industry, but we consider it worth the price for the sake of achieving a readily verifiable standard. No doubt the elimination of the chief value system will also benefit the U.S. Government, since it will permit the more rational and productive utilization of Customs manpower now engaged in attempting to police the chief value standard.

The conversion of the textile and apparel schedules from the TSUS to the Harmonized System has been an extremely complex and demanding process. Many difficult issues have arisen. Although these are highly technical, their resolution will have a major economic impact on our industry, which is highly impacted by imports and which is significantly dependent on tariffs and quotas based on tariff classifications.

Throughout this process, we have been impressed by the competence and dedication of the U.S. Government personnel who are involved in the design, documentation, and negotiation of the Harmonized System. We very much appreciate the way in which the U.S. Government employees responsible for the conversion have consulted with industry to develop the most effective and least disruptive ways of implementing the conversion. Not all issues have been resolved in our favor, and some problems remain in the new edition of the Harmonized System. However, we are confident that these issues will be resolved fairly, and that the end result - achieving a standardized and verifiable tariff system - will surely justify the cost and effort incurred by both the U.S. Government and private industry.

At the same time, we strongly believe that the conversion should be considered on its own merit. Accordingly, it is very important that the enabling legislation be unambiguous in maintaining the statutory status of tariff lines, and that it not provide any new administrative authority to change tariffs. The establishment of tariffs must remain solely within the power of Congress.

We strongly support the adoption of the Harmonized System and urge you to favorably recommend the implementing legislation, with no changes in current tariff-changing authority, so that the U.S. Harmonized System can go into force on January 1, 1988.

Very truly yours,

Donald R. Hughes

jn

C.J. TOWER & SONS CUSTOMHOUSE BROKERS

Please refer to file C&S-Harmonized System
February 25, 1987

Customs Agents For

C P Rail
Canadian National Railways Co.
Chesapeake & Ohio Railway Co.
Grand Trunk Western Railroad Co.
Consolidated Rail Corp.
Canada Coach Lines Ltd.
Gray Coach Lines Ltd.
Greyhound Lines Inc.
American Airlines Inc.
Eastern Air Lines Inc.
U S Air, Inc.
United Air Lines, Inc.
C N Route
C P Express & Trans. Ltd.
Can. Freightways Eastern Ltd.
Constable Transport Ltd.
Dominion - Cons. Truck Lines Ltd.
Doral Transport Co.
Fruitbelt Trucking Inc.
Hendrie & Company Limited
Inter-City Truck Lines (Can. div.) Inc.
Kingsway Transports Ltd.
McKinley Transport Ltd.
Monarways Direct
Mo. American Van Lines Can. Ltd.
Overland Express Ltd.
Quinn Truck Lines Ltd.
Red Star Express Lines of Ont. Ltd.
St. Johnsbury Trucking Co. Inc.
Taggart Service Limited
Thibodeau-Finch Express Ltd.
Zavitz Bros. Ltd.

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Newport, VT
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Richford, VT
St. Albans, VT

House Ways and Means Committee
U.S. House of Representatives
Longworth House Office Building, Room 1102
Washington, D.C. 20515

Attention: Mr. Joseph K. Dowley
Chief Counsel

Gentlemen:

We wish to make the following comments to your committee concerning legislation which will convert the Tariff Schedules of the United States into the nomenclature of the Harmonized System.

The conversion to the Harmonized System will have a major impact on Customs, other government agencies, Customs brokers and the importing/exporting community. All parties involved must devote a substantial amount of time and resources to complete the conversion by the anticipated effective date January 1, 1988. Businesses with extensive automated processing systems face a large task and may not be able to successfully complete the conversion by that date. Therefore we strongly urge that a later date be set for implementation. If Congress acts favorably on conversion, we recommend it become effective January 1, 1989. This will allow all parties to effect the conversion in an orderly manner with little disruption to day-to-day business.

The importing and exporting community must be informed at the earliest possible time whether the United States will implement the Harmonized System and the effective date. If Congress does not act quickly and give sufficient lead time the affected parties may not be able to make the necessary changes by the effective date.

We also believe implementation should be consistent with existing Customs regulations found in 19 CFR 141.68. Accordingly goods entered, or withdrawn from warehouse, for consumption prior to the effective date should be entered using the existing Tariff Schedules and goods entered, or withdrawn from warehouse, for consumption on or after the effective date should be entered using the converted Tariff Schedules.

126 DEARBORN STREET BUFFALO, NEW YORK 14207 PHONE (716) 874-1300

We trust these comments will be useful to you in your deliberations.

Respectfully,

C. J. TOWER & SONS

Stuart B. Sheldon
Vice President of Operations

DMB:sjb

Serko, Simon & Abbey
Counsellors at Law
Customs & International Trade Law

One World Trade Center - Suite 3971
New York, N.Y. 10048 - 212-775-0055
Telex: 426516 Trade Cable: Trade Attys
Facsimile: 212-839-9103

Bank of the South - Suite 1400
Atlanta, Georgia 30303 - 404-659-4488

424 North Capitol Street, N.W. - Suite 712
Washington, D.C. 20001 - 202-347-5959

New York - February 26, 1987

Mr. Joseph K. Dowley
Chief Counsel Committee on Ways and Means
U.S. House of Representatives, Room 1102
Longworth House Office Building
Washington, DC 20515

Re: Comments on the Harmonized System

Dear Mr. Dowley:

A news release dated Monday, January 12, 1987 invited the public to comment on the adoption of the Harmonized System (HS).

On behalf of our client Charles Beseler Company of Florham Park, New Jersey, we wish to submit for your review the attached comments which were sent to the Secretary, Trade Policy Committee, Office of the U.S. Trade Representative (USTR) on January 28, 1987.

Our letter requested that a separate breakout for textile camera bag components be provided for under the HS so that the parts could continue to be imported free of duty under the Generalized System of Preferences (GSP).

In addition to our comments to the USTR we are submitting copies of two letters in support of our request to maintain GSP

status for the camera bag components. These letters illustrate the economic impact to Clayton, Delaware and the surrounding towns if GSP benefits are removed.

The first letter, dated February 6, 1987, is from Mr. Mario R. D'Antonio the president of Clayton East Wind, Inc. of Clayton, Delaware. The second letter, dated February 20, 1987, is from Mr. Peter Donatello Sr., manager of The Four Joint Boards which is affiliated with the International Leather Goods, Plastics and Novelty Workers' Union, AFL-CIO.

We have pointed out to the USTR that the President had directed them "to avoid tariff-rate changes to the extent practicable and to simplify the tariff where possible without rate changes significant for U.S. industry, workers, or trade."

If this issue is not addressed by the USTR we would appreciate your favorable action upon review of the HS.

We thank you for your consideration of our request and would appreciate an opportunity to discuss this matter further at your convenience.

Sincerely,

SERKO, SIMON & ABBEY

Joel K. Simon

JKS/dg
Enclosure
CC: Senator Joseph R. Biden
Senator William V. Roth, Jr.
Congressmen Thomas R. Carper

Sorko, Simon & Abbey
Counsellors at Law
Customs & International Trade Law

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New York, N.Y. 10048 - 212.775.0055
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Bank of the South - Suite 1800
Atlanta, Georgia 30303 - 404.659.4488

444 North Capitol Street, N.W. - Suite 712
Washington, D.C. 20001 - 202.347.5858

New York - January 29, 1987

Ms. Carolyn Frank
Secretary, Trade Policy Staff Committee
Office of the U.S. Trade Representative, Room 521
600 17th Street, N.W.
Washington, D.C. 20506

Re: COMMENTS ON THE HARMONIZED SYSTEM
HEADING 6307.90.80

Dear Ms. Frank:

On behalf of our client Charles Beseler & Company of Florham, New Jersey, we wish to submit the following comments on the third edition of the proposed conversion of the Tariff Schedules of the United States (TSUS) into the nomenclature structure of the Harmonized Commodity Description and Coding System (HS).

Our client is a major importer of camera bag components. These components are currently imported under the provision for other ornamented textile articles, nspf, of man-made fibers in TSUS item 386.1343, and are eligible for GSP benefits from various beneficiary countries.

We believe that these camera bag components would be

classified under heading 6307.90.80 of the HS. This heading does not reflect any GSP designation.

Since our client now imports these camera bag components with the benefit of GSP, he is able to provide employment for skilled U.S. workers who assemble the components into finished articles.

It is his feelings that if he is unable to import these components duty free, he will have to import finished bags assembled abroad eliminating employment for U.S. workers, in order to remain competitive.

We have been requested by the domestic assembler of these camera bags, Clayton East Wind of Clayton, Del. to express his concern at the possible elimination of work. Their only function is to assemble camera bags. The factory is located in the small community of Clayton, Delaware which has a population of 1,300 people. Clayton East Wind is a major source of employment for this community.

We have also been requested by the Union that represents the workers at Clayton East Wind to express their concern at the possible elimination of their jobs in the event that camera bag components are no longer imported.

The workers belong to the International Leather, Plastic & Novelty Goods Workers, Local 167.

The loss of employment would be a severe blow to the community.

Conclusion

For the above reasons, we propose that textile camera bag components be provided for separately under the Harmonized heading as follows:

Heading No.	Description	Duty Rate	Special
4202.92.40	Parts of luggage . . .	7%	FREE (A)

We thank you for your consideration of our request and would appreciate an opportunity to discuss this matter further at your convenience.

Sincerely,

SERKO, SIMON & ABBEY

Joel K. Simon

JKS/ms

Clayton East Wind, Inc.

LEEDS FAIRWAY

February 6, 1987

Serko, Simon & Abbey
One World Trade Center - Suite 3371
New York, NY 10048

Attention: Joel K. Simon, Esq.

Gentlemen:

We are hereby confirming our various conversations regarding the assembling of camera bags we are doing for you.

The facility that we presently occupy was formerly the Leeds Travelwear Division of Rapid American. It was designed to manufacture various types of luggage and hired approximately 1,200 people. The population of Clayton is only 1,300 and Leeds employed the majority of the population, and also drew employees from the surrounding towns such as Smyrna, Delaware, and the rural areas of adjacent Maryland. The employment was good, the people were making money and were craftsmen. There is very little other employment down here with the exception of the food industry such as General Foods, Perdue, and Campbell's Soup. These are all seasonal and Leeds was the only one providing steady work.

Approximately 10 years ago the luggage business in the country declined tremendously, due to the foreign imports. Companies such as Samsonite, Hartman and Leeds fell on hard times for local manufacturing. The net result was that in 1980 the work force of Leeds declined to approximately 100 people from 1,200.

These 100 people were engaged in making the bowling bags and golf bags, which at that time were competitive because their bulk and volume did not permit them to be imported cheaply. This, combined with the design of the collapsible golf bags, permitted them to be imported from the Orient, thus destroying what was once a flourishing luggage and sporting goods business.

By 1983 our employment was down to approximately 20 people. In 1984 we were approached to finish camera bags which were being brought in in parts from the Orient. We grabbed the opportunity to at least try to cover overhead while we were looking and scrounging around for what little business there was. The net result is that at the present time we are employing 30 people from the original 1,200 to sew and assemble the camera bags you are bringing in.

CLAYTON EAST WIND, INC.
(302) 653-8501

LEEDS/FAIRWAY

33 BASSETT STREET, CLAYTON, DE 19938
TELEX: 835484

As we have told you, we are looking around for other sources to do similar work, although not in the camera bag area. It seems that there is a need for assembling work brought in from the Orient.

Your work is the only hope for these 30 people for full time employment and, should it not last, we would be forced to lay them off. You must remember one thing, these people are all craftsmen and have worked here for over 25 years. The people who have been layed off have collected all their unemployment plus supplemental unemployment provided by the federal government under the program that was developed to assist workers whose jobs are destroyed by imports.

Anything you can do to assure us of continuity will be greatly appreciated as all of these people have no place to go due to their age and craftsmen's training.

Yours very truly,

CLAYTON-EAST WIND, INC.

Mario R. D'Antonio

Mario R. D'Antonio

MRD/a
cc: Cecil Voils
Charles Beseler Co.

The Four Joint Boards

New England/New Jersey/New York/Pennsylvania

Affiliated with International Leather Goods, Plastics and Novelty Workers' Union, AFL-CIO

General Office: 265 West 14th Street, New York, N. Y. 10011

Telephone: ALgonquin 5-7488

Manager

Peter Donatello Sr.

February 20, 1987

Joel Simon , Esq.
Serko, Simon and Abbey
One World Trade Center
Suite 3371
New York, New York 10048

Dear Mr. Simon,

I am the Manager of the Four Joint Board of the International Leather Goods, Plastics and Novelty Workers' Union, AFL-CIO. I am writing this letter in regard to our Local Union Plant in Smyrna, Delaware, Clayton East Winds Inc., where we have approximately thirty members assemblying camera bags from parts that were brought in from the Orient. At one time the same people who are assemblying these camera bags were part of the Leeds Travelware located in the same building. At that time Leeds employed approximately twelve hundred people and their business fell off due to flooding of imports that came from the Orient.

We are trying to get any kind of work that can be performed by our members in this plant. I understand that the congress is considering stopping un-assembled parts from coming in.

It is the contention of the Union that we would rather cut and assemble the bags here, but we are told the only way Clayton East - Winds Inc., can get the work is if it is pre-cut from the Orient. We in the Union at this point would have to take a realistic approach to the fact that assembled pre-cut parts from the Orient is better than no work at all.

Therefore, we are appealing to you to do everything that you can to help us keep working and keep our members from being another statistic in the unemployment figures.

Thank you for your kind cooperation, I remain,

Very truly yours,

Peter Donatello

Peter Donatello Sr., Manager
Four Joint Boards

PD/trr

cc: M. D'Antonio
Cecil Volis

BEFORE THE
TRADE SUBCOMMITTEE OF THE
COMMITTEE ON WAYS AND MEANS

COMMENTS OF
THE CIGAR ASSOCIATION OF AMERICA, INC.
REGARDING THE PROPOSED CONVERSION OF THE
TARIFF SCHEDULES OF THE UNITED STATES INTO
THE HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM

The following comments are offered on behalf of the Cigar Association of America, Inc. ("CAA") in response to the January 12, 1987 notice of the Trade Subcommittee soliciting views on the proposed conversion of the Tariff Schedules of the United States into the Harmonized Commodity Description and Coding System ("Harmonized System"). The substance of the CAA's comments has previously been submitted to the Trade Policy Staff Committee, chaired by the Office of the United States Trade Representative. These comments focus on a particular problem in the Third Draft of the proposed conversion, hereinafter referred to as the "Third Draft Conversion".

Chapter 24 in the Third Draft Conversion is entitled "Tobacco and Manufactured Tobacco Substitutes". Its counterpart in the current Tariff Schedules is Part 13 of Schedule 1, which refers to "Tobacco and Tobacco Products". Both classification systems contain a "basket category", as follows:

TARIFF SCHEDULES

Item 170.80 - "Tobacco, manufactured or not manufactured, not specially provided for:

THIRD DRAFT CONVERSION

Heading 2403 - "Other manufactured tobacco and manufactured tobacco substitutes; 'homogenized' or 'reconstituted' tobacco; tobacco extracts and essences:"

Heading 2403 does not apply to unmanufactured tobacco, whereas TSUS Item 170.80 covers both manufactured and unmanufactured tobacco in that basket category. Against that background, it should be noted that the Customs Service treats homogenized tobacco and tobacco cut to shape or pattern (so-called, "wrapper die cuts") as unmanufactured tobacco; that is, tobacco in leaf form, whether stemmed or unstemmed. T.D. 56410(41) and Letter Ruling 060650, August 30, 1979.[1/] In contrast, Heading 2403 clearly treats homogenized tobacco and, presumably, tobacco die cuts as manufactures or manufactured products.

In CAA's view, homogenized tobacco and tobacco cut to pattern are properly classifiable under TSUS Item 170.80. Consequently, we believe that Heading 2403 of the Third Draft Conversion correctly treats these products as manufactures or manufactured products, rather than as leaf tobacco (i.e., unmanufactured tobacco). The pertinent Headnote in the Tariff

---

1/ The Customs Service ruling on wrapper die cuts relied on the analogous treatment of homogenized tobacco, as described in Summaries of Trade and Tariff Information: Schedule 1, Volume 11, TC Pub. 194 (1967) at p. 7. That Tariff Commission publication, in turn, cited T.D. 56410(41) with respect to the classification of homogenized tobacco.

Schedules, as well as the pertinent Legal Note in the Third Draft Conversion, defines all tobacco as either "wrapper tobacco" or "filler tobacco". Each is defined in terms of leaf tobacco; that is, tobacco in its natural state. In short, tobacco which has been subjected to a manufacturing process and which, as a result, is no longer in its basic leaf form (apart from stem removal) cannot be considered unmanufactured tobacco.[1/] That meaning is clearly reflected in the history of Tariff Schedules, its predecessors and judicial decisions.

For the sake of clarify we urge that the inclusion of tobacco cut to pattern under Heading 2403 be made as explicit as homogenized tobacco. This would require the addition of a new line item after 2403.91.00, as follows:

"2403.91.10 Tobacco cut to pattern.....38.6 cents/kg"

The conversion of the Tariff Schedules into the Harmonized Systems gives the U.S. Government an opportunity to correct a number of tariff anomalies, such as that described above. For that reason alone, the conversion process will be a very useful exercise.

Norman Sharp, President
Cigar Association of America, Inc.
1100 17th Street, N.W., Suite 504
Washington, D.C. 20036
Telephone: (202) 223-8204

1/ It is well-established that cutting to pattern or shape is a manufacturing process. See, for example, Kleinberger & Katz v. United States, in which the Court of Customs and Patent Appeals held that pieces of leather cut to form and size for making purses and bags were manufactured articles, because they had been subjected to manufacturing processes. 12 Ct. Cust. Appls. 571, 576 (1925).

CPIRA
INCORPORATED
The Copying Products and Inked Ribbon Association Inc.
P.O. Box 518, Hyannis, Massachusetts 02601 • (617) 775-5625

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SUBCOMMITTEE ON TRADE

Membership:

Bee Chemical Company
Brady Manufacturing
Buckeye Business Products Inc.
Cartridge and Hurley Ribbon
Codo Manufacturing Corporation
Columbia-Great Lakes Corporation
Curtis-Young Corporation
Data Card Corporation
Distinguished Brands, Inc.
Echodata Corporation
Franklin Ribbon & Carbon Co.
General Ribbon Corporation
Inked Ribbon Corporation
International Imaging Materials, Inc.
Kay Ribbon Company, Inc.
MDS Storms Company
Mid-City Copying Products, Inc.
Molecudyne
Molly-Stryk Corporation
National Ribbon Corporation
NH Laboratories
Pacific Computer Products
Pelikan, Incorporated
Repeat-O-Type Manufacturing
Rittenhouse Paper Company
Sercomp Corporation
Shape Technology
TA Roytype Supplies
West Point Products, Inc.
Wyomissing Converting Co.

Charles M. Sabatt, Counsel

Associate Membership:

Bomont Industries
Burlington Impression Fabrics
Business Machines Supplies, Inc.
Milliken & Company
Regentrop & Bernard N.A., Inc.
Turbon Products U.S.A.

February 23, 1987

Samuel M. Gibbons, Chairman
Subcommittee on Trade
Committee on Ways and Means
2204 Rayburn House Office Building
Washington, D.C. 20515

Re: Harmonized Commodity Description and Coding System; Inked Fabric and Film Ribbons - Proposed Sections 5806 et sequens, 9612 et sequens, 8473 et sequens.

DearMr. Gibbons:

The Copying Products and Inked Ribbon Association, Inc., is a trade association comprised of the leading American manufacturers of inked fabric and film typewriter and printer ribbons. The Association (CPIRA, Inc.) urges your subcommittee to reject the proposed classifications contained in the Harmonized System relating to film and fabric ribbons, and machine parts, namely Sections 5806, 5806.32, 5806.32.1.0; 9612, 9612.10, 9612.10.40; 8473, 8473.10.00, 8473.10.00.10, 8473.10.00.90, 8473.21.00, 8473.29.00, 8473.30, 8473.30.40, 8473.30.80, and 8473.40.00.

CPIRA, Inc., urges your subcommittee to preserve the TSUS Classifications set forth within Exhibit A attached hereto and to carry forward those classifications into the new Harmonized System Tariff Classifications.

The TSUS Classifications (set forth in Exhibit A) were adopted on July 1, 1986, as the result of a petition filed by CPIRA, Inc., with the Committee for Statistical Annotation of Tariff Schedules of the United States International Trade Commission. Adoption of the proposed classifications of the Harmonized System will reverse the results achieved with substantial expense and effort by the CPIRA, Inc. Preservation of the current TSUS categories is essential to the industry represented by CPIRA, Inc., for the following reasons:

1. The current TSUS categories are essential for collecting of data needed to measure accurately the nature and quantity of inked ribbon imports.

It is submitted that inked fabric and film ribbons in cartridges and cassettes are in chief value. Accordingly, fabric and film ribbons for typewriters, data processing machines and calculators should be reported separately, an accomplishment of the current TSUS classifications. The proposed Harmonized System category, specifically 8473 et sequence, will obscure ribbons among machine parts. Consequently, the industry represented by CPIRA, Inc., will not be able to measure the imports of film and fabric ribbons as an item independent of machine parts and, in particular, of cassettes and cartridges.

Proposed Sections 5806 et sequence will likewise undermine the specificity set forth within the TSUS category derivative, Section 347.60 et sequence. The current sections break out into separate categories inked and uninked typewriter and machine ribbons, whereas the proposed substitute in the Harmonized System will offer a general category for ribbons (Section 5806.32.10).

Likewise, proposed Sections 9612, 9612.10 and 9612.10.40 eliminate completely the necessary specificity established by TSUS categories 389.62 et sequence. The TSUS categories require reporting of articles according to specific widths and deliniate between strips and spools. The Harmonized System will simply require reporting of ribbons made from man-made fibres, thereby eliminating the explicitness sought by the current TSUS categories.

If the industry represented by this Association is deprived by the relevant portions of the Harmonized System of the ability to properly measure ribbon imports, then manufacturers will not be able to evaluate their market accurately. Hence, the reliability of planning and investment will be undermined.

2. The industry has reason to believe that prior to the adoption of the current TSUA categories, certain importers under-reported the volume and value of inked film and fabric ribbons because, among other reasons, they were able to report ribbons as machine parts. Requiring reports of fabric and film ribbons within cassettes, which is accomplished by TSUS category 676.50 et sequence, will help to prevent under-reporting. Because the proposed sections 8473 et sequence of the Harmonized System eliminate the fabric and film ribbons in cassette categories, it is feared that the liklihood of under-reporting will be increased.

In addition to your review of the foregoing comments, CPIRA, Inc., would appreciate your extending the time for commenting from February 27, 1987 to April 30, 1987. The reason for an extension is that CPIRA, Inc., members did not become aware until the beginning of February of your request for comment, and did not meet until February 19, 1987, at which time the Harmonized System was a topic of discussion. Therefore, the membership would be most appreciative of your considering an extension of time within which to submit comments.

Thank you very much for your attention to this letter. I trust that it will be helpful in your deliberations. If you desire any additional information or comment, then please do not hesitate to contact me. In addition, I look forward to hearing from you with respect to the request for an extension of time within which to comment.

Very truly yours,

Charles M. Sabatt
Counsel

EXHIBIT A

TSUS CATEGORIES

JULY 1, 1986

	Narrow fabrics:		
	Of man-made fibers:		
347.60	Other:.....		9%
	Typewriter and machine ribbons:		
347.6025	Inked, not cut to length.....	lb.	
347.6030	Not inked, not cut to length...	lb.	
347.6040	Other.....	lb.	
	Articles not specially provided for, of textile materials:		
	Of man-made fibers:		
389.62	Other:		9%
	Inked ribbons:		
	Of fabric:		
	Not over 1" in width:		
389.6250	On spools.....	Doz.	
389.6254	Other.....	Yd.	
		Lb.	
389.6256	Over 1" in width:.....	Yd.	
		Lb.	
	Of strips:		
389.6260	On spools.....	Doz.	
389.6265	Other.....	Yd.	
		Lb.	
	Parts of the foregoing (typewriters, calculating machines, accounting machines, and office machines nspf including data processing machines):		
676.50	Typewriter parts.....		4%
	Inked typewriter ribbons in cartridges or cassettes:		
676.50.10	Fabric ribbons.....	No.	
676.50.20	Film ribbons.....	No.	
676.54	Parts of automatic data-processing machines and units thereof:		Free
	Other:		
676.54.40	Inked fabric ribbons.....	No.	
676.54.50	Inked film ribbons.....	No.	
676.56	Other:.....		3.9%
	Parts of calculating machines, accounting machines, etc.:		
	Inked ribbons in cartridges or cassettes:		
676.56.10	Fabric ribbons.....	No.	
676.56.20	Film ribbons.....	No.	

February 27, 1987

Box 727
Memphis, TN 38194
901 369-3600

Mr. Joseph K. Dowley
Chief Counsel
Ways and Means
U.S. House of Representatives
Room 1102
Longworth House Office Building
Washington, D. C. 20515

Dear Mr. Dowley:

Federal Express Welcomes the opportunity to submit comments to the House Ways and Means Subcommittee on Trade. Federal Express Corporation would like to go on record in support of conversion of the United States Tariff Schedules to the Harmonized Commodity Description and Coding System.

Adoption of the Harmonized System will not only facilitate international trade; it will also facilitate the collection, comparison and analysis of international trade statistics. It will result in a significant reduction in the expense now incurred by the need to translate, redescribe, reclassify, and recode goods as they move from one country to another in the course of international trade.

The Harmonized System is also intended to be used for the purposes of freight tariffs and transport statistics of the various modes of transport. Considering the importance of accurate and comparable data for the purposes of international trade negotiations and the need to comply with all of the regulatory requirements of the various countries involved, we consider it essential that a harmonized system be adopted.

It is our understanding that adoption of the System will also bring about more harmonized Customs practices and procedures throughout the world. We have recently read that over 150 of our major trading partners will either adopt or subscribe to the Harmonized System for use within their respective countries.

One of the major benefits of the Harmonized System, in our opinion, although infrequently mentioned, is that language barriers will be practically eliminated in the description of commodities that flow across international boundaries.

We fully support this legislation, and again, we appreciate the opportunity to provide input into this proposed legislation.

Very truly yours,

FEDERAL EXPRESS CORPORATION

Sarah S. Harviel

Sarah S. Harviel
Attorney

Footwear Retailers of America
1319 F STREET N.W. WASHINGTON, D.C. 20004 (202) 737-5660

PETER T. MANGIONE
PRESIDENT

These comments are submitted on behalf of the Footwear Retailers of America ("FRA") on the Proposed Conversion of the Tariff Schedules of the United States (TSUS) into the Harmonized Commodity Description and Coding System ("Harmonized System").

Members of FRA retail about half the shoes sold annually in the United States through their more than 20,000 outlets.

The footwear sections of the TSUS are among the most complicated for any product. Chapter 64 of the Draft Conversion has added to this complexity. Among the most significant changes in the Draft Conversion is the elimination of chief value as a basis for classification of leather suede joggers. This change eliminates the confusion surrounding this large volume of trade and is supported by the private sector and the U.S. Customs Service. However, the October 1986 Draft Conversion raises the duty rate on these footwear to eleven percent from the rate of 10.5 prcent in the current draft. This rate must be returned to 10.5 percent if the principle of rate neutrality underlying the the Conversion is to be maintained.

The Draft Conversion also omits a provision existing in the TSUS which excludes protective footwear with non-molded stitched uppers from classifications for other protective footwear. As a result, duty rates on a huge amount of trade in boots and other footwear will increase from the current six percent to a maximum of 37.5 percent. Provisions to exclude these products from classifications for other protective footwear must be added to preserve rate neutrality in the Conversion.

We are attaching our detailed comments on these and other issues submitted to the Trade Policy Staff Committee with respect to the Harmonized System.

Footwear Retailers of America
1319 F STREET N.W. WASHINGTON, D.C. 20004 (202) 737-5660

PETER T. MANGIONE
PRESIDENT

January 15, 1987

Ms. Carolyn Frank, Secretary
Trade Policy Staff Committee
Office of United States Trade
Representative
600 Seventeenth Street, N.W.
Washington, D.C. 20036

Subject: Draft Conversion of Tariff Schedules to Harmonized System Nomenclature

Dear Ms Frank:

We are writing in response to the Federal Register notice of December 1, 1986, 51 FR 43262-43263 to comment on the third Draft Conversion of the Tariff Schedules into the Nomenclature Structure of the Harmonized System.

Members of the Footwear Retailers of America (FRA) retail about half the shoes sold annually in the U.S. through their more than 20,000 outlets.

The complexity of the current Tariff Schedule ("TSUS") provisions for footwear has made conversion into the Harmonized System nomenclature an extremely difficult task. In many respects, Chapter 64 of the Draft Conversion is a commendable effort. In most respects the Draft Conversion has achieved one of its basic goals set forth in the President's original guidelines for the Conversion of achieving rate neutrality for individual products. Regrettably, however, major problems exist in the current Draft Conversion which must be corrected if this goal is to be achieved with respect to footwear. These problems relate to 1) certain protective footwear; 2) leather/suede joggers; 3) turned footwear; and 4) uppers affixed to midsoles but without outer soles.

Certain Protective Footwear

Under the current TSUS, protective footwear having soles or uppers of which over ninety percent of the exterior surface area is rubber or plastics (except polyvinyl chloride footwear classified under TSUS 700.51) are classified under three TSUS numbers: 700.52, at a duty rate of 25 percent; TSUS 700.53, at a duty rate of 37.5 percent; and TSUS 700.56 at a duty rate of 6 percent. The classification of certain protective footwear under TSUS 700.56 is the result of an important exception to the superior heading to TSUS 700.52 and 700.53, which excludes protective footwear with non-molded stitched uppers. The superior heading states:

> Hunting boots, galoshes, rainwear, and other footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease, or chemicals or cold or inclement weather, all the foregoing having soles and uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear with uppers of nonmolded construction formed by sewing the parts thereof together and having exposed on the outer surface a substantial portion of functional stitching). (Emphasis added)

Protective footwear which are currently classified under TSUS 700.56 and subject to a duty rate of six percent ad valorem as a result of this exception, account for a huge amount of trade in boots, including sewn winter boots, moonboots, snowboots, and snow joggers. These footwear would also include any non-molded stitched upper protective footwear having a metal toe, protective "sports" footwear, as well as protective footwear not covering the ankle.

Footwear currently classified under TSUS 700.56 are intended to be classified under the Draft Conversion under four HS item numbers, 6402.19.10, 6402.30.30, 6402.91.40, and 6402.99.15, and are to be accorded a six percent rate of duty as under TSUS 700.56. These classifications are all subject to language excluding protective footwear from their coverage. However, as can be seen from the heading to each of these H.S. item numbers, the protective footwear exclusion is far broader under the Draft Conversion because the heading omits the language in the current TSUS which would have the effect of excepting footwear with non-molded sewn uppers from the protective footwear exclusion. The heading to each of these H.S. item numbers states:

> Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having

> foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of other footwear as a protection against water, oil, grease, or chemicals or cold or inclement weather).

Under this language a vast amount of footwear currently subject to duty rates of 6 percent will be subject to rates of 25 or 37.5 percent.

In order to replicate the existing rate structure for moonboots, snowboots, sewn winter boots, and other similar footwear currently classified under 700.56, we propose that the above-quoted language be amended so that protective footwear with nonmolded sewn uppers are not excluded from coverage under H.S. numbers 6402.19.10, 6402.30.30, 6402.91.40, and 6402.99.15 and recommend the following heading to these H.R. item numbers be adopted:

> Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics except 1) footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except 2) footwear designed to be worn over, or in lieu of other footwear as a protection against water, oil, grease, or chemicals or cold or inclement weather, other than footwear with uppers of nonmolded construction formed by sewing the parts thereof together and having exposed on the outer surface a substantial proportion of functional stitching).

Without the addition of this language from the current TSUS, a major duty increase will be imposed upon a huge volume of winter footwear.

Leather/Suede Joggers

In our letter to Chris Marcich, Director, Harmonized System, dated November 20, 1986, (attached) FRA expressed its strong belief that the proposed increase in the tariff rate on Harmonized System Tariff Item Nos. 6404.11.20 and 6404.19.15, which cover imports of leather/suede joggers, from the previously published 10.5 percent ad valorem to 11 percent ad valorem, is unwarranted.

As noted in that letter, the 10.5 percent duty rate was agreed to by FRA, the American Association of Exporters and Impor-

the Rubber Manufacturers Association, the U.S. Customs Service, the Office of the U.S. Trade Representative, the Commerce Department, and the U.S. International Trade Commission in June 1984 as a substitute single duty in the interest of eliminating the difficult to administer "chief value" test. Thus, the increase in the duty rate for these products reverses an agreement reached by domestic footwear manufacturers, footwear retailers and importers and the U.S. interagency task-force on the Harmonized System.

Moreover, as noted in our November 20 letter, the contemplated increase in the duty rate for these footwear is premised upon the erroneous conclusion that the 10.5 percent duty rate would result in a revenue loss. On the contrary, the 10.5 percent rate (or a rate even below 10.5 percent) is consistent with current trade patterns as well as with actual trade during 1981-1983, taking into account the large number of successful protests on the proper classification of these footwear.

For the reasons set forth in that letter, we believe it is essential that the duty rate for these footwear be returned to 10.5 percent.

Turned Footwear

The current TSUS includes a provision for "turn or turned footwear," TSUS 700.20, subject to a duty rate of 2.5 percent ad valorem. The term turned footwear refers to a method of footwear construction in which the upper is sewn to the outer sole inside-out.

The Draft Conversion contains no comparable provision for turned footwear. These footwear are included as footwear of other than welt construction under TSUS 6403.59.60, 6403.59.90, 6403.51.60, 6403.51.90, 6403.91.60, 6403.91.90, 6403.99.60, and 6403.99.90, and are subject to duty rates of 8.5 percent for men, youths, and boys, and 10 percent for other persons.

The decision not to include specific provisions for turned footwear was made as part of the ITC's original study of the Harmonized System. We understand the decision not to include such a provision was based upon the relatively low volume of imports of these footwear. However, imports of turned footwear have grown significantly in recent years and are now substantial, as can be seen from the following table.

U.S. Imports of Turn or Turned Footwear
(TSUS 700.20) 1982-1985 January-October, 1986

Period	Quantity (pairs)	Value ($)
1982	394,026	2,435,528
1983	593,892	3,279,005
1984	1,023,684	4,451,457
1985	1,742,350	7,756,586
Jan.-Oct., 1986	2,611,377	13,056,218

In view of the increased trade in this product, FRA recommends that a separate classification be established for turned footwear at a duty rate of 2.5 percent.

Uppers Affixed to Midsoles But Without Outer Soles

In the 1984 Draft Conversion, Additional U.S. Note No. 4 stated:

> For purposes of heading 6405 "footwear without outer soles" means unfinished footwear consisting of an upper to which an insole or midsole has been affixed but with no affixed outer sole.

These products were classified under 6405.20.10-60 with duty rates ranging from 8.5 percent to $.90/pair plus 37.5 percent.

The latest Draft Conversion amends Additional U.S. Note No. 4 as follows:

> For the purposes of heading 6406 "footwear without outer soles" means footwear uppers affixed to inner soles or other sole components but without outer soles.

These footwear are now classified under 6406.10.05-50. The duty rates are unchanged from those in the 1984 Draft Conversion.

Although the duty rates are unchanged in the current Draft Conversion from the 1984 draft, the change in definition of footwear without outer soles and its inclusion within heading 6406 rather than 6405 has the effect of pre-empting pending litigation before the U.S. Court of International Trade, challenging the classification of these articles as unfinished footwear. In the pending court action Simod America Corp., Consolidated Case No. 85-500649, plaintiff is arguing that uppers affixed to a sock (underfoot) are not unfinished footwear, but are merely uppers and subject to lower rates of duty.

In essence, by classifying these products under Heading 6406 the Draft Conversion adopts the position of plaintiff that these articles are parts, rather than unfinished footwear. However, the Draft Conversion establishes duty rates on these articles for unfinished footwear rather than for parts. This should be corrected either by reducing the rate for footwear without outer soles to the corresponding rate for other parts or alternating by deleting the current classifications for "footwear without outer soles 6406.10.05 - 6406.10.50 as well as Additional U.S. Note 4 and establishing new corresponding classifications for these products which are not preemptive. We propose that these classifications be established under a new subheading, "uppers with a midsole which but for the absence of an outsole would be classified in sections 6401-6405 pursuant to General Rule of Interpretation 2(a)" under the heading 6406.99 for "other" parts of footwear as set forth in attachment A. Under this latter alternative, should the Court of International Trade rule in favor of plaintiff that the articles in question are not unfinished footwear these articles would be classified under other provisions of section 6406.

Compounding this problem in the case of uppers of textile materials with midsoles affixed but without outer soles is the continued assignment to these articles of duty rates for footwear of textile materials having foxing or a foxing-like band applied or molded at the sole and overlapping the upper. There exists no rationale for assigning duty rates for footwear with foxing to these footwear parts either in terms of commercial practice or as a matter of current classification. As noted above, we believe these products should be assigned the duty rates for footwear parts in recognition of their proper classification. At worst, these articles should be assigned the duty rates of 12.5 percent for articles not over 10 percent by weight of rubber or plastics and otherwise 37.5 percent, which would correspond to rates for comparable lower priced footwear without foxing or a foxing like band and without soles overlapping the upper.

Sincerely,

Peter T. Mangione

Attachment A

Other:

Uppers with a midsole which but for the absence of an outsole would be classified in sections 6401 - 6405 pursuant to General Rule of Interpretation 2(a).

With uppers of leather or composition leather:	
For men, youths & boys	8.5%
For other persons	10%
With uppers of textile materials:	
Having uppers of which over 50 percent of the external surface area (including any leather accessories or reinforcements such as mentioned in note 4(a) to this chapter) is leather:	
For men, youths & boys	8.5%
For other persons	10%
Other:	
Less than 10 percent by weight of rubber or plastics	12.5%
Other	37.5%
Other:	
Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics	6%
Other	37.5%

Attachment A (continued)

Other:	
Of textile materials	17%
Of man-made fibers:	
Leg-warmers	
Other	
Other:	
Leg-warmers	
Other	
Of rubber or plastics	5.7%
Bottoms	
Other	
Of leather	5%
Other	18%

FEBRUARY 27, 1987

STATEMENT OF JAMES B. CLAWSON

CHAIRMAN, HARMONIZED SYSTEM COMMITTEE OF THE JOINT INDUSTRY GROUP

Submitted to the Subcommittee on Trade #1, Committee on Ways and Means, U.S. House of Representatives

I am pleased to submit these comments to the Committee on behalf of the Joint Industry Group (JIG). The JIG is a coalition of 75 business firms, trade associations, and law and other professional firms, intimately involved with U.S. imports and exports. The Group is particularly concerned with actions by the U.S. Customs Service in administering the Customs laws and the myriad of trade and other statutes and regulations which affect manufacturing and marketing operations.

The members of the JIG have followed the development of the Harmonized System (HS) in the Customs Cooperation Council. Several companies and associations worked directly with the U.S. delegation over the years to make sure that the new system would reflect U.S. interests. It is our view that any system of commodity classification that will harmonize customs, statistical and transportation tariffs and their rules of interpretation will greatly assist the international trading community. The proposed Harmonized Code is such a system.

The Code developed by the Customs Cooperation Council member countries is the basic six digit system which leaves up to individual country users the opportunity to add additional digits for further tariff and statistical breakouts. Comments have been made by members of the JIG during the conversion of

this basic code into the Tariff Schedules of the United States (TSUS) at the ten digit level. Most recently, a number of members submitted comments in response to the third edition published in October of 1986. The JIG fully agrees with the President's request to the International Trade Commission (ITC) in making the conversion to the HS that changes in rates of duty be kept at a minimum. We are watching the Article XXVIII negotiations under way in Geneva with interest to see that all countries make the conversion as revenue neutral as possible.

The implementing legislation has only recently been submitted by the Administration. The JIG is currently in the process of reviewing that legislation and would like a further opportunity after that review to share its views with the Committee Staff. There are some key points covering the operation and maintenance of the system that should be included.

The HS will give very important assistance to exporters who are not familiar with the tariff schedules of many other countries. A common classification system at even the six digit level will allow exporters to determine in advance of export, the classification of goods in the foreign country. Any U.S. legislation should allow for classification rulings to exporters to make this a most effective export tool.

In summary, the HS is supported by the JIG as needed to assist exports and generally help in the international trade operations of U.S. business and industry. It will greatly facilitate automation and should ultimately reduce the risk of errors in duty collection and increase the accuracy and timeliness of statistical reporting. For the HS to be most helpful, the legislation implementing this system should be clear and comprehensive. The JIG will complete its review of the proposed legislation expeditiously. We thank the Committee Members and the Staff in advance for this opportunity to share our comments.

COMMENTS OF K MART CORPORATION
ON THE PROPOSED
HARMONIZED COMMODITY DESCRIPTION
AND CODING SYSTEM.

These comments are submitted on behalf of K mart Corporation in response to a Press Release, dated January 12, 1987, soliciting public comment on the Third Edition of the proposed conversion of the Tariff Schedules of the United States (TSUS) into the nomenclature structure of the Harmonized Commodity Description and Coding System ("Harmonized System", or "HS").

While K mart supports the concept of the HS, it also believes that Congress should not rush to meet a proposed January 1, 1988 effective date, at the expense of creating a classification system which will withstand the test of time. K mart has imported merchandise from countries located throughout the world pursuant to the current TSUS for the past 24 years, and would rather live with this classification system for the next several years, than to operate under a system which has been enacted prior to a careful and complete analysis.

In particular, the HS should not be enacted unless and until Congress carefully reviews the Administration's proposed correlation between the Harmonized System and textile and apparel quota categories, and the "Generalized System of Preferences -- Harmonized System Conversion Documentation." Careful analysis of these two documents is essential to fully understand the impact of the 1,100 page HS on K mart's business plans.

Nothwithstanding the foregoing, K mart is submitting these comments at the present time because it would like Congress to understand the importance of a carefully planned classification System on K mart's business operations. These comments will focus on two major product groupings in which K mart purchases merchandise from sources located overseas: toys and wearing apparel.

I. TOYS, GAMES, DOLLS AND RELATED ARTICLES

K mart endorses the Third Draft of Chapter 95 of the Harmonized System ("Toys, Games and Sports Equipment; Parts and Accessories Thereof"), insofar as it eliminates many of the arcane tariff distinctions appearing in the TSUS,[1/] and provides for a uniform rate of duty (6.8 percent) for all merchandise classified in the 4-digit heading 9503. In this manner, the Harmonized System will simplify K mart's administrative procedures, without significantly increasing the duty payable on any imported product.

In regard to specific provisions in the current draft of the Harmonized Sytem, we offer the following comments

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1/ For example, in the TSUS, "stuffed toy figures of animate objects valued not over 10 cents per inch of height" are classifiable in item 737.28, TSUS, dutiable at the 1987 rate of 11.2 percent ad valorem, while an identical stuffed toy "valued over 10 cents per inch of height" is classifiable in item 737.30, TSUS, dutiable at the 1987 rate of 5.5 percent. It clearly no longer is necessary to continue this distinction under the HS.

1. Retention in Harmonized System of Substance of Headnote 1, Subpart E, Part 5, Schedule 7, TSUS.

Headnote 1, Subpart E, Part 5, Schedule 7, TSUS, provides that, with certain specified exceptions, any article falling within the purview of the TSUS provisions for "Models, dolls, toys, tricks, party favors," must be classified in Subpart E, Part 5, "whether or not such articles are more specifically provided for elsewhere in the tariff schedules." This Headnote has helped ensure that the vast majority of toys imported by K mart are classified as toys, in Subpart E, thereby insulating these products from unneccessary political controversy (e.g., textiles and wearing apparel).

K mart suggests that an additional U.S. legal note be added to Chapter 95 which expressly incorporates the language of Headnote 1, Subpart E, into the Harmonized System. If Congress does not wish to place this additional clarifying language in the text of Chapter 95, we request that Congress publish non-statutory explanatory notes to the Harmonized System (in the same manner as the Tariff Commission published the Tariff Classification Study of 1960 as the authoritative interpretation of the TSUS) which clarifies the fact that toys will be classified in Chapter 95, notwithstanding the fact that they may be named elsewhere in the HS.

2. Eligibility of Articles for Duty Free Entry Under the CBI.

In the current draft of the HS, 10 separate eight digit item numbers in 9503-9506, of Chapter 95 have been excluded in whole or part from eligibility for duty free entry pursuant to the Caribbean Basin Economic Recovery Act (CBI).

K mart believes that all of these HS paragraphs should be eligible for CBI free entry, and requests that Congress restore all of these paragraphs to full eligibility ("E"). At the very least, Congress should designate all of the above referenced paragraphs with an "E*" (as distinguished from complete removal from CBI eligibility), so that only those articles falling within General Note 3(c)(vi)(D) would be excluded from the CBI.2/

Moreover, K mart urges Congress to reconsider the TPSC decision that certain toys composed of textile material should be precluded from CBI eligibility, ostensibly because they fall within the statutory exclusion for "textile and apparel articles which are subject to textile agreements." In fact, none of the articles classified in Headings 9503-9506 have ever been subject to a bilateral textile agreement or encompassed within any sort of quota restraint. Notwithstanding that a toy may be composed of textile material, it nevertheless remains a toy, and is sold by K mart in its toy department, and not as wearing apparel or other textile articles. In this regard, the version of the Textile and Apparel Enforcement Act of 1985, which if enacted would have imposed quota and licensing requirements on textile imports, expressly excluded textile toys, classified in Subpart E, Part 5, Schedule 7, TSUS, from its scope. Since this exclusion was supported by the major proponents of the bill, it is clear that those domestic textile interests most concerned with protecting the U.S. textile and apparel industry recognized that there was no reason to impose import restraints on toys -- even those composed of textile materials. Toys derive their chief

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2/ There is absolutely no reason why a plastic toy figure, classified in paragraph 9503.49.00, or plastic doll clothing, classified in paragraph 9502.91.00 should be precluded from CBI free entry.

characteristic from their amusement features, and therefore do not fall within the purview of Article 12 of the Multi-Fiber Arrangement, as products that derive their chief characteristics from their textile components. Accordingly, there is no reason, either as a matter of law, trade policy, or common sense, to exclude toys from the CBI. Accordingly, K mart believes that Congress should allow all articles classified in Chapter 95 to be imported duty free under the CBI.

3. Classification of Inflatable Balls.

Inflatable toy and game balls currently are classified in item 735.09, TSUS, dutiable at the 1987 rate of 4.8 percent. The HS attempts to divide this TSUS provision into inflatable toy balls, classified in paragraph 9503.90.40.40, dutiable at the rate of 6.8 percent ad valorem, and inflatable sports and outdoor game balls, classified in paragraph 9506.62.80.60, dutiable at the rate of 4.8 percent ad valorem. Because it will be practically impossible for the Customs Service to distinguish between the majority of inflatable toy balls and inflatable game balls, and because there is no reason to raise the duty rates applicable to toy balls, K mart proposes that Congress eliminate the term inflatable toy balls, in paragraph 9503.90.40, by adding a U.S. Legal Note (or other indicia of "legislative intent") confirming that all inflatable balls, not specially provided for (including toy balls) are classified in paragraph 9506.62.80.60, dutiable at a 4.8 percent rate of duty.

4. Classification of Toy Soldiers and Action Figures Representing Human Beings.

The Customs Service has an established and uniform practice of classifying traditional toy soldiers (representing human beings) as toy figures of animate objects, in item 737.40, TSUS. In addition, certain non-traditional toy soldiers, and other action figures are not bought and sold as dolls.3/ Toy soldiers and action figures represent an important, distinct category of toys. Under the HS, toy soldiers (and certain action figures) would be classified in the "basket" provision for other toys in paragraph 9503.90.40.60, since the toy figure provisions only provide for "toys representing animals or non-human creatures," as distinguished from the current provision for "toy figures of animate objects" (which include human figures other than dolls). To remedy this situation, K mart suggests that an additional 10-digit paragraph be added to the HS under paragraph 9503.90.40, for "toy soldiers and action figures."

5. Classification of Toy Costumes and Other Outfits.

The Customs Service has an established and uniform practice of classifying children's Halloween costumes and other toys chiefly worn for amusement, as "other toys, not specially provided for," in item 737.95, TSUS, rather than as wearing apparel. Legal Note 1(e), Chapter 95, HS, states that this chapter does not cover "Sports clothing or fancy dress, of textiles," whereas Note 1(t) to Section XI states that articles classified in Chapter 95 are not classified in the Section for Textiles and Textile Articles.

3/ Action figures generally are small (less than 6" high) articulated, plastic figures of human beings, marketed as boys' toys, which the toy industry considers to be a distinct category of merchandise, separate and apart from dolls.

K mart believes that where Halloween (or other children's or adults') costumes, which are chiefly worn for amusement, are sold by K mart in its toy department, and are designed, marketed and advertised as toys, these costumes should be classified as toys. In this manner, toys will not become embroiled in the political controversy surrounding U.S. textile imports.

To avoid the possibility that the Customs Service might construe Legal Note 1(e) as requiring Customs to classify all textile costumes in Chapters 61 and 62, K mart suggests that an additional legal note be added to the HS to this effect, or in lieu thereof, that Congress publish explanatory material to confirm that toy costumes should be classified in Chapter 95.

6. Clarification of Concept of Accessories

One new HS principle which does not appear in the TSUS is the inclusion of "accessories" in the same provision as articles with which they are "solely or principally suitable for use." The term accessory is not defined in the HS, and K mart is concerned that this new concept may result in considerable confusion and potential increased duty rates. In this regard, we note that "accessories" has an extremely broad meaning within the toy industry, and includes a wide variety of toys which are intended to be played with in conjunction with a particular toy. For example, accessories for fashion dolls (e.g., Barbie) arguably include all of the separate toys sold as part of the doll's play environment. Under the TSUS, these accessory toys generally are classified as "other toys", in item 737.95, TSUS, rather than in the TSUS provision for "dolls or parts of dolls". Under the HS, the possibility exists that accessory toys will be classified in paragraphs 9502.91.00 ("Garments and accessories thereof") or 9502.99.30 ("other parts and accessories") and dutiable at higher rates than would be applicable to accessories classified in paragraph 9503. It is not clear whether U.S. Rule of Interpretation 1(c) ("a provision for 'parts' or 'parts and accessories' shall not prevail over a specific provision for such part or accessory."), will solve this potential problem. K mart suggests that the drafters of the U.S. version of the HS clarify the concept of accessories in such a manner as to ensure that the duty rates on the many accessory toys imported by K mart are not increased under the HS.

II. WEARING APPAREL

K mart endorses the Third Draft of Chapters 61 and 62 of the HS (Articles of Apparel and Clothing Accessories") insofar as it eliminates the distinction between ornamented and non ornamented apparel, and classifies imported garments on the basis of weight, rather than value. However, K mart also believes that the HS must not be enacted without first providing all interested parties the opportunity to review the impact of the HS on the current textile quota system. The HS undoubtedly will have significant implications on this system,[4/] and K mart believes that the full effect of this change in tariff nomenclature must be studied carefully prior to enactment. This careful review is of such critical importance that

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4/ For example, under the current system a sweater of 40 percent by weight wool and 60 percent by weight polyester, chief value wool, would be classified in category 446, sweaters of wool. Under the HS, this sweater would be considered to be composed of man-made fibers in paragraph 6110.3020 and arguably would be included in textile category 646, sweaters of man-made fibers.

K mart believes that the HS cannot be enacted unless and until the HS-quota category correlation is implemented in a manner which ensures that the U.S. abides by its international committments, and does not utilize the HS as a tool to unduly restrict apparel imports. K mart endorses that concept of free and fair trade, and purchases its apparel products from all available sources, so that its customers can obtain quality products at affordable prices. Given the considerable lead time necessary to purchase garments from foreign vendors, K mart believes that it is essential that the HS have a "quota neutral" impact, and thereby allow K mart to effectively operate under any new classification system.5/

Until K mart's concerns are addressed, and Congress carefully reviews the Administration's HS-quota correlation, and until such correlation is perfected so as to achieve quota neutrality, K mart respectfully withholds its endorsement of the HS.

In addition, K mart believes that in certain instances the wearing apparel sections of the HS will result in unjustified increases in duty. For example, the Draft Conversion's duty rate for men's and boys' woven coats (HS 6201.12.20) is 14.5 percent ad valorem which equals the arithmetic average of the final MTN rates for ornamented (21%) and non-ornamented (8%) articles. Similar arithmetic averages have been used to calculate the duty rate for women's and girls' woven cotton coats (HS 6202.12.20), women's and girls' cotton woven trousers (HS 6204.62.40), and men's and boys' woven cotton trousers (HS 6203.42.40). K mart submits that the preliminary decision to use arithmetic averages of current ornamented and non ornamented TSUS rates distorts the intent of the HS to be revenue neutral for particular item numbers. K mart suggests that these proposed duty rates be recalculated to reflect the trade weighted average between ornamented and non ornamented apparel, which will result in substantial decreases in duty rates for these articles.

A second set of unjustified increases in duty rates will result from the new definition of coating in Note 2(a) of Chapter 59, which provides that fabrics in which the coating "cannot be seen with the naked eye" are not "coated" fabrics. Not only does the Draft HS impose a requirement which the U.S. Courts have rejected, but for those garments which have a coating that cannot be seen with the unaided eye, the Draft HS imposes a duty rate significantly higher than the rates imposed under the TSUS. For example, men's or boy's cotton raincoats meeting the current TSUS definition of coated garments are now subject to a duty rate of 6.6 percent ad valorem (TSUS 376.54). Under the Draft HS these coats will be classified in paragraph 6201.12.20 subject to a duty rate of 14.5 percent ad valorem. In the case of coated ski jackets of man-made fibers (non down), the duty rate would increase from 7.6 percent ad valorem (TSUS 376.56) to 29.5 percent ad valorem (HS 6211.20.20).

K mart suggests the proposed duty rates applicable to coated garments (where the coating cannot be seen with the naked eye) be reduced to the rates currently in effect. This result can be achieved by creating new 8 digit categories under provisions for the relevant HS paragraphs to establish duty rates at 6.6 percent and 7.6 percent for articles "manufactured of fabrics not falling within 5602, 5603, 5903, 5906 or 5907 with coatings that visibly

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5/ For example, under the TSUS, ski gloves are classified in item 735.06, TSUS, dutiable at a rate of 5.5 percent ad valorem, entitled to duty free entry under the GSP, and are not subject to quota restraints or licensing requirements. Under the HS, ski gloves have been included in Chapters 61 and 62 ("Wearing Apparel") and it is uncertain whether the Administration will attempt to redefine this category of merchandise or subject ski gloves to quota restraints.

and significantly affect the surface or surfaces thereof otherwise then by a change of color." This would bring these coated articles into conformity with duty rates under the current TSUS classification system.

A third potential problem in the draft HS involves the potential that duty rates will increase signifiantly on articles in chief value silk, linen, or ramie, and chief weight cotton, wool, or man-made fibers. Under the current chief value system, garments in chief value silk, linen, or ramie, and chief weight cotton, wool, or man-made fiber, are subject to the duty rates for articles of chief value silk, or articles of chief value vegetable fibers (except cotton). The changeover to the chief weight system will result in the identical articles being subjected to the substantially higher duty rates applicable to articles in chief weight of cotton, wool, or man-made fibers.6/

K mart respectfully submits that these duty increases were not intended and should be eliminated. One potential remedy would be to establish new 8 digit classifications, where appropriate, for articles containing 35 percent or more by weight of silk or non-vegetable textile fibers (except cotton), and to assess duty on these particular item numbers at the rates currently applicable to articles in chief value silk, ramie, etc. An alternative solution would be to add an additional U.S. Legal Note to the HS specifying that articles which are 35 percent or more of silk or vegetable fiber (except cotton) are classifiable under the applicable HS provisions for articles of silk or other vegetable fibers (except cotton), as appropriate.

Finally, K mart is concerned that the new HS definition of babies' garments in Note 5, Chapter 61, to include only articles "for young children of a body height not exceeding 86 centimeters", could result in a severe restriction on its ability to import children's garments into the United States. However, K mart will not know whether its concerns are justified until the USTR publishes its HS quota correlation.

K mart thanks the Committee for the opportunity to submit these comments. However, at the same time, K mart reiterates its position that all interested parties must be allowed to review HS - GSP and HS - quota correlations prior to implementation of the HS. Only if careful consideration is given to these important factors will K mart be in a position to fully understand the effect of the proposed HS on its business (and its customers), and to fully endorse the laudable effort to create a modern Harmonized System of tariff classification.

6/ For example, the duty rates on a women's silk/acrylic sweater (chief value silk, chief weight acrylic) would increase from 6 percent ad valorem under the present chief value system to 34.6 percent ad valorem under the chief weight system. Similarly, under the present chief value system, a duty rate of 7.5 percent ad valorem is imposed on women's woven silk/nylon blouses (chief value silk, chief weight nylon). Under the draft HS, a duty rate of 28.6 percent ad valorem would be imposed.

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FACSIMILE: 202 466 0327
202 639-1611
DIRECT DIAL NUMBER

February 26, 1987

Joseph K. Dowley
Chief Counsel
Committee on Ways and Means
U.S. House of Representatives
Room 1102
Longworth House Office Building
Washington, D.C. 20515

Subject: Written Comments On Proposed Conversion
Of The Tariff Schedules of the United States
Into The Harmonized Commodity Description
And Coding System

Dear Mr. Dowley:

On behalf of KabiVitrum, Inc., we wish to advise you of our concern regarding the potential impact of the third edition of the Harmonized System as presently drafted, upon the operations of KabiVitrum in the United States. We are currently discussing this matter with the Office of the United States Trade Representative and other involved agencies. We are hopeful that this problem will be appropriately resolved prior to submission of the final draft Harmonized System to Congress for approval.

For your information, we enclose a copy of our written comments submitted to the Office of the United States Trade Representative.

Very truly yours,

Donald Zarin

Donald Zarin
Counsel for
KabiVitrum, Inc.

Enclosure

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January 30, 1987

Ms. Carolyn Frank
Secretary
Trade Policy Staff Committee
Office of the United States
Trade Representative
600 17th Street, N.W.
Room 521
Washington, D.C. 20506

Re: Harmonized Commodity Description and Coding System; Classification of Purified Soybean Oil for use in Intravenous Fat Emulsions

Dear Ms. Frank:

On behalf of KabiVitrum, Inc. (KabiVitrum), we file these comments in response to the Federal Register Notice of December 1, 1986, and respectfully urge the Trade Policy Staff Committee (TPSC) to remove a significant threat to KabiVitrum's U.S. operations which would result from adoption of the Harmonized System in its present form. Please note that Exhibit B is Business Confidential Material.

KabiVitrum, a California corporation, is a wholly-owned subsidiary of KabiVitrum A.B., a leading Swedish pharmaceutical manufacturer headquartered in Stockholm. KabiVitrum has offices in Alameda, California and operates a laboratory and manufacturing facility in Clayton, North Carolina. KabiVitrum manufactures and markets a wide range of pharmaceutical products including genetically-engineered hormones, other biological products, and an intravenous fat emulsion for parenteral (intravenous) nutrition sold under trademark as Intralipid.

KabiVitrum, A.B. pioneered in the development of intravenous fat emulsions; the original formulation has been emulated by numerous competitors, foreign and domestic. Intralipid is now widely used throughout the world in the care of the critically ill and post-operative surgical patients, and occupies a significant position in the U.S. market for intravenous fat emulsions.

Since 1978 KabiVitrum has manufactured Intralipid at its North Carolina facility using materials manufactured by KabiVitrum A.B. in Sweden to Food and Drug Administration (FDA) and U.S. Pharmacopeaia (USP) specifications. The principal active ingredient, and the subject of this comment, is USP soybean oil, purified and

treated by KabiVitrum A.B. according to a patented process,[1] then shipped to North Carolina for manufacture into Intralipid fat emulsion. The KabiVitrum process results in lower levels of polar compounds, free fatty acids, peroxide, unsaponifiable matter, and other organic impurities found in commercial grades of soybean oil.[2] KabiVitrum's "sac" oil (so-called because the process uses a Silicic acid column for purification), is not fungible with commercially refined and purified soybean oil.

KabiVitrum has imported soybean oil since 1978 from its parent under a "drugs" provision of the TSUS, 439.3090, which provision carries a duty of 1.5 percent ad valorem.[3] Some of KabiVitrum's non-U.S. competitors sell imported product in the U.S., but they import fat emulsions in finished, dosage form, generally carrying a duty of 3.9 percent or higher as provided in TSUS 440.00. Unlike producers who import finished product (and add no value in the U.S.) KabiVitrum's manufacturing operation

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1 Selected pages from the patent grant are attached as Exhibit A which explain the medical benefits of this process.

2 A description of the process as approved by the Food and Drug Administration is contained in KabiVitrum's New Drug Approval documentation, attached as Exhibit B.

3 A copy of the U.S. Customs Service advisory classification is attached as exhibit C.

is highly sensitive to the rate of duty for raw materials, and especially for its own soybean oil.

During 1987 KabiVitrum expects to import from Sweden approximately 200 metric tons of highly purified pharmaceutical grade soybean oil, valued at approximately four million dollars.

Upon adoption and implementation of the Harmonized System a "drugs" provision will cease to exist. Instead, absent a modification in the current Draft, KabiVitrum's product would be classified under Item 1507.90.00: "Soybean oil its fractions....other..." carrying a duty of 22.5 percent ad valorem. Such a massive duty increase would render KabiVitrum's U.S. production of Intralipid uneconomic, and leave it no choice but to suspend its U.S. production of Intralipid. Such a suspension is likely to result in a serious shortage of this important product among medical consumers in the U.S. market.

KabiVitrum, Inc. recognizes that the 22.5 percent tariff on commercial soybean oil has for many years preserved the benefits of an extensive support program for an important U.S. crop. This agricultural rate of duty for commercial soybean oil is, however, irrelevant to

KabiVitrum's uniquely pharmaceutical product. Its purified soybean oil in no way competes with domestic soybean oil, and no substitution is possible. KabiVitrum's imports represent less than one half of one-hundredth of one percent (.0037) of U.S. annual production of soybean oil, estimated for marketing year 1986-87 at 5.4 million metric tons.4/ Thus, the U.S. soybean industry would realize no meaningful incremental benefit if KabiVitrum's pharmaceutical product were to be assessed a duty over fourteen times higher than the current applicable rate, or if the product in consequence disappeared from the U.S. market.

On the other hand, KabiVitrum's U.S. production of Intralipid, and a number of U.S. jobs, are at grave risk. Having established a manufacturing presence in the U.S., KabiVitrum would be forced to write off a significant investment in capital and human resources.

For the foregoing reasons, KabiVitrum respectfully requests that the Trade Policy Staff Committee establish a "breakout" category for pharmaceutical grade soybean oil which would preserve the existing 1.5 percent rate of

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4 Statistical Office of the American Soybean Association, St. Louis, Mo.

duty. Such a category could be defined in any one of the following ways:

1. "Pharmaceutical Grade, for Medical Use";
2. "Meeting FDA Requirements for Use in Intravenous Fat Emulsions";
3. "Purified to Pharmaceutical Standard";
4. "For use by injection in medicinal fat emulsions".

For its part, KabiVitrum would be willing to take any steps deemed necessary by the Customs Service to verify product identity and to assure that there is no diversion of its product to the commercial market.

KabiVitrum appreciates the opportunity to bring this problem to the attention of the TPSC. It is of the utmost importance to Kabivitrum that its purified soybean oil be permitted to enter the U.S. at the reasonable rate of duty which it has enjoyed for the past nine years. We would be pleased to work with TPSC and any other interested agencies in fashioning a solution to this very significant problem for KabiVitrum.

Sincerely,

Edward M. Leigh

Edward M. Leigh
Attorney for
KabiVitrum, Inc.

EXHIBIT A

3.

United States Patent [19]

Chang

[11] 4,101,673

[45] Jul. 18, 1978

[54] PURIFICATION OF NUTRITIVE OILS

[75] Inventor: Stephen S. Chang, East Brunswick, N.J.

[73] Assignee: Vitrum AB, Stockholm, Sweden

[21] Appl. No.: 745,089

[22] Filed: Dec. 13, 1976

Related U.S. Application Data

[63] Continuation-in-part of Ser. No. 498,548, Aug. 19, 1974, abandoned.

[51] Int. Cl.[2] A01N 9/24

[52] U.S. Cl. 424/312

[58] Field of Search 424/312

[56] References Cited

U.S. PATENT DOCUMENTS

2,119,199	1/1938	Kalish	424/312
2,945,849	7/1960	Meyer et al.	424/312
2,972,565	2/1961	Ziverstit	424/312
2,977,283	3/1961	Meyer et al.	424/312
3,169,094	2/1965	Wretlind	424/312
3,734,886	5/1973	Fujisawa	424/241
3,791,246	2/1974	Shimazaki et al.	260/403

FOREIGN PATENT DOCUMENTS

1,592,582	6/1970	France.
79,916	2/1971	German Democratic Rep.
821,312	2/1960	United Kingdom.

OTHER PUBLICATIONS

Singleton et al., J. Am. Oil Chem. Soc. (1966), 43(10), pp. 592-595.

Jensen et al., Lipids 1(6), pp. 451-452 (1966).

Min et al., J. Am. Oil Chem. Soc. (1972) 49(12) 675-677.

Lin - Thesis 10/1968, Rutger's Univ.

Primary Examiner—Albert T. Meyers
Assistant Examiner—D. W. Robinson
Attorney, Agent, or Firm—Cook, Wetzel & Egan, Ltd.

[57] ABSTRACT

Parenterally administrable oil-in-water emulsions formed from nutritive oils, such as soybean and sunflower oils, are improved first by treating the nutritive oil with silicic acid to remove undesirable components such as peroxides, pigments, thermal and oxidative decomposition products, certain unsaponifiable matter such as sterols, and polymers. Purification is effected by treating the oil with silicic acid or silica gel either directly, or as a solution thereof in a suitable solvent, such as hexane. Autoxidation of the purified oil is prevented by adding to the purified oil a tocopherol antioxidant, γ-tocopherol being preferred. There is also added a metal scavenging agent such as ascorbyl palmitate.

7 Claims, 4 Drawing Figures

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PURIFICATION OF NUTRITIVE OILS

This application is a continuation-in-part of my copending application Ser. No. 498,561, filed Aug. 19, 1974 (now abandoned).

BACKGROUND OF THE INVENTION

1. Field of the Invention

This invention relates to a nutritive oil in water emulsion for use in parenteral administration, wherein said nutritive oil is refined or purified soybean oil or sunflower oil. The invention further relates to the purification of nutritive oils used in oil in water emulsions for parenteral feeding, such as soybean and sunflower oil, and in particular, the invention relates to the removal from such oils of undesirable components such as peroxides, pigments and thermal and oxidative decomposition products and polymers. Autoxidation of the purified oil is prevented by adding to the purified oil a tocopherol antioxidant, preferably γ-tocopherol, along with a metal scavenging agent such as ascorbyl palmitate.

2. The Prior Art

Glucose in solution has long been used for the purpose of parenteral nutrition. However, emulsions of certain nutritive oils in water have certain definite advantages over glucose solutions for that purpose. Firstly, oil has a higher caloric content than does glucose. Secondly, since oil is insoluble in water, it does not exert an osmotic effect and thus, can be used in vivo at higher concentrations than can glucose. However, when oil in water emulsions are used for intravenous feeding, there are several distinct problems which must be contended with. Thus, such oil in water emulsions, when injected intravenously, can cause many adverse physiological effects, such as back pain, fever, chills, headache, dizziness, blood pressure fluctuations, liver damage, and the so-called "overloading syndrome", and also, the emulsion may be damaged during storage and transportation under refrigerated temperatures.

A commercial prior art oil-in-water emulsion sold under the name Intralipid is understood to be produced in accordance with the teachings of U.S. Pat. No. 3,169,094 to Wretlind. The literature has reported that abnormalities have been observed in liver function tests during hyperalimentation with Intralipid. Significant eosinophilia has been reported, as well as elevated alkaline phosphatase and brown pigmentation of the reticuloendothelial system of the liver. Swelling of both the mitochondria and endoplasmic reticulum have been noted. Febrile responses, chills, sensation of warmth, shivering, vomiting and pain in chest and back, thrombophlebitis have been observed. [See: A. G. Coran, The Hyperalimentation of Infants with a Commercial Fat Emulsion, 110–117. Proceedings of a meeting on Intravenous Feeding held in Vancouver, Canada, January, 1974; Margaret R. Pendray, Peripheral Vein Feeding in Infants: Techniques, Results and Problems, 158–176. Proceedings of a meeting on Intravenous Feeding held in Vancouver, Canada, January, 1974; and Hallberg et al. Fat Emulsion for Complete Intravenous Nutrition. Postgrad. Med. 1967, 42, A-71, 87, 99, 149.]

It is an object of this invention to provide a process for purifying such nutritive oils to remove from the oils those substances which are at least partly responsible for the problems associated with their use in parenteral emulsions. Among these substances are peroxides, pigments, unsaponifiables such as sterols, and thermal and oxidative decomposition products and polymers. It is a further object of the invention to provide a process whereby autoxidation of the purified oils may be retarded.

It has been demonstrated that oils which have been subjected to elevated temperatures in the presence of oxygen form oxidative decomposition products and polymers and that such oxidized oils are toxic. It has been reported that certain fractions of such oxidized oils, and particularly certain of the non-urea-adducting fatty acid fractions are highly toxic when substituted for fresh fats in the diets of test animals. Generally it has been found that the non-urea-adduct-forming materials found in oxidized oils showed a high deviation of organ size (organ enlargement and liver growth depression similar to the liver damage observed in testing Intralipid) in test animals as well as irritation of the digestive tract, cancer and death. [See: Acute Physiological Effects of Feeding Rats. Non-urea-adducting Fatty Acids. Shue, G. M., Douglass, D. C., and Firestone, D. Jour. Nutrition 94, 171–178 (1968); The Effect of Heated Fat on the Carcinogenic Activity of 2-Acetylaminofluorene. Sugal, M., Wining, L. A., Tsuchiyama, H., and Kummerow, F. A. Cancer Res. 22, 510–19 (1962); and The Chemical and Biological Properties of Heated and Oxidized Fats. Artman, N. R. Advances in Lipid Research 7, 245–330 (1969).]

Many techniques have been proposed in the prior art for purifying nutritive oils for use in oil in water emulsions for parenteral feeding, but none of these techniques involves the use of silicic acid for removing the above-described impurities. [See, e.g., Singleton et al. "A Method For Adsorbent Fractionation of Cottonseed Oil For Experimental Intravenous Fat Emulsions", The Journal of the American Oil Chemists' Society, Vol. 43, pp. 592–595 (1966), which describes, in connection with the preparation of aqueous cottonseed emulsions for parenteral administration, removal of pigments and polar components of cottonseed oil by sequentially treating the oil with bleaching earth and alumina adsorbents.] Similarly U.S. Pat. No. 3,169,094 to Wretlind, describes mild extraction of soybean oil with an organic solvent such as ethanol, ether, or petroleum ether, and deodorization with active carbon and alumina, followed by preparing an aqueous emulsion of the thus treated soybean oil and egg phosphatides, this emulsion being suitable for parenteral administration. As was mentioned above, the commercial version of oil-in-water emulsions produced in accordance with the Wretlind teaching has not been free from problems.

Further, the literature reports that alumina causes decomposition of lipids, and that the treatment of oil with alumina is likely to form various undesirable decomposition products. [See, e.g., "Lipid Chromatographic Analysis", Edited by Guido V. Marinetti, Vol. 1, published by Marcel Dekker, Inc., New York, 1967, page 221, which states:

> "Bartstrom (103) and others found, however, that alumina caused alterations in lipid structure during chromatography, namely, alumina partially hydrolyzed glycerides and other fatty acid esters, isomerized mono- and diglycerides, promoted autoxidation and isomerization of double bonds, and caused dehydration of peroxidized lipids."

"Autoxidation of Linoleic Acid" by D. Le Mammick and S. F. Mason, Nature, 156, 717–718 (1945), report the dehydration of peroxides of linoleic acid (a major component of soybean oil and sunflower oil) on treat-

'87-01-26 16:3. KABIVITRUM AB 46 8 536343 04

ment with alumina: and "Artifacts Found During Alumina Chromatography", by B. M. Lawrence, J. W. Hogg and S. J. Terhune, Journal of Chromatography 12, 261-262 (1960), reported the dimerization and trimerization of vegetable oil components which were chromatographed with alumina.]

SUMMARY OF THE INVENTION

According to one aspect of the present invention, there is provided an aqueous emulsion of refined or purified soybean oil or of sunflower oil, which emulsion is highly advantageous for parenteral administration.

According to another aspect of the invention, there is provided a method of purifying nutritive oils to remove therefrom impurities such as peroxides, pigments, unsaponifiables such as sterols, and thermal and oxidative decomposition products and polymers by passing the oil through a column or a layer of a suitable siliceous adsorbent, such as silicic acid or silica gel. The treatment of nutritive oils by the method of the present invention removes therefrom a group of impurities generally known as "non-urea-adduct-forming esters". The impurities removed from nutritive oils by the process of the present invention are chemically similar to the non-urea-adduct-forming esters found in thermally oxidized vegetable oils, as shown by infrared and NMR-spectrophotometry. It has been demonstrated that when a soybean oil is treated in accordance with the teachings of Example 1 of U.S. Pat. No. 3,169,409 to Wretlind, that the product is highly colored and has a strong odor. When such an oil is passed through a silicic acid column, in accordance with the present invention, a light colored oil is obtained. The impurities which remain in the column as a color band and which can be recovered from the column, have been shown by infrared and NMR-spectrophotometry to be chemically similar to the impurities removed from commercially refined soybean oil using the present invention.

As was mentioned above, it has been reported that such impurities, and particularly the non-urea-adduct-forming esters found in thermally oxidized oils are markedly toxic when substituted for fresh oils in the diets of test animals. Thus the present invention contemplates the removal of potentially toxic materials from nutritive oils and that the resulting purified oil is adapted to produce an improved oil-in-water emulsion for use in parenteral nutrition. In addition to producing an oil having a reduced level of impurities, it has been discovered that silicic acid also has a higher capacity to treat oil, as is reported in Table IV below. Such increased capacity results in a more economical process and a lower cost, improved product.

The oil which has been purified in accordance with the present invention, while having considerably less of the above-mentioned impurities than does the original oil, may undergo autoxidation at a faster rate, with the possibility of forming more undesirable peroxides. In order to stabilize the thus purified oil and retard its tendency toward undergoing autoxidation, the invention further provides a method for stabilizing the purified oil which involves adding to the purified oil a tocopherol antioxidant, preferably γ-tocopherol, desirably together with a scavenging agent such as ascorbyl palmitate, to thereby increase its resistance toward autoxidation. As a result of this stabilization, emulsions prepared from the purified and stabilized oil may be stored and transported without undergoing an excessive degree of oxidative decomposition.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a photograph of a silicic acid thin layer chromatogram of a soybean oil sample before and after purification on a silicic acid column;

FIG. 2 is a photograph of a silicic acid thin layer chromatogram of a sunflower oil sample before and after purification on a silicic acid column;

FIG. 3 is a photograph of a silicic acid thin layer chromatogram comparing individual samples of sunflower oil, namely: original sunflower oil (A), a soybean oil isolated from a commercially available product (B), sunflower oil which has been purified by passage through a silicic acid column (C), and soybean oil which has been purified by passage through a silicic acid column (D); and

FIG. 4 is a photograph of a silicic acid thin layer chromatogram comparing individual samples of sunflower oil, namely: (original sunflower oil (A), sunflower oil purified by passage through a filtering pad of silicic acid (B,C,D), and sunflower oil purified by passage through a silicic acid column (E).

DETAILED DESCRIPTION OF THE INVENTION

There will now be given a detailed description of the invention, which description will be best understood when taken in conjunction with the accompanying drawings.

I. PURIFICATION OF OILS BY SILICIC ACID COLUMN CHROMATOGRAPHY

1. Soybean Oil

Silicic acid of 100 mesh particle size, such as the Analytical Reagent Grade manufactured by Mallinckrodt Chem. Works, was washed and activated according to the method described by Sabarabudhe et al in Jour. Amer. Oil Chem. Soc. 38:88, 1961. Three hundred gm of the washed, activated silicic acid were used to pack a chromatographic column of 40 mm. diameter to an approximate height of 50 cm. A commercially refined, bleached and deodorized soybean oil was passed through the column by either applying vacuum at the bottom or pressure at the top, or both. The temperature of the column was maintained at room temperature throughout the procedure. If desired, the column may be wrapped with an electric heating tape to increase its temperature to about 60°-80° C, which has the effect of significantly increasing the flow rate of the oil through the column. The oil can be passed through the column alone or in the form of a solution in a solvent, such as hexane. To prevent oxidation of the oil, the process may be conducted under an inert atmosphere such as nitrogen. When the oil or a solution thereof was passed through the column, the impurities in the oil which included peroxides, pigments, unsaponifiables, polar monomers, and thermal and oxidative decomposition products and polymers were adsorbed on the column as a dark colored band. The first 25 gm. or so of eluate were collected separately for later analysis. The oil or solution thereof was continuously fed into the column until the colored band moved down the column. The passage of oil through the column was continued until the dark colored band approached the bottom of the column. The eluate or purified oil, after passing through the silicic acid column was suitable for the preparation of oil in water emulsions for parenteral feeding.

ATTACHMENT 2, Page 1 of 1

CLASS CLA-1-MI, 8-19-68, CLA-1-TC, 3-11-66

Your ref. letter: 12/19/78

Addressed to: U.S. Customs Service, 6 World Trade Center, New York, N.Y. 10048

TARIFF CLASSIFICATION AND RATE OF DUTY (NOT BINDING)

Date: APR 3 1979

Refer to: CLA-2-61:C

Reference: ~~NY/372/057~~

CUSTOMHOUSE, 6 WORLD TRADE CENTER, NEW YORK, NEW YORK 10048

1. Your inquiry asks advice as to the tariff classification and rate of duty on merchandise described as follows on the basis of information furnished by you:

Purified Soybean Oil, a product of Sweden

2. In the opinion of this office, merchandise conforming to such description would be classifiable as shown below:

COLUMN 2 RATE applies if the merchandise is the product of a country or area set out on the last on the reverse of this reply, or if the rate has not been modified pursuant to trade agreement or otherwise.

TARIFF DESCRIPTION	ITEM (TSUS)	COLUMN 1 RATE OF DUTY	COLUMN 2 RATE
Natural Drug, Advanced	439.3090	1.5% ad valorem	

The merchandise is subject to an additional assessment as shown:

4. The descriptive material furnished by you is insufficient in the following particulars to permit this office to express an opinion as to the duties on the merchandise to which you refer.

THE OPINIONS EXPRESSED IN THIS REPLY WITH RESPECT TO THE DUTIES ON THE MERCHANDISE DESCRIBED ARE NOT BINDING. If you need a binding classification as to the dutiable status of the merchandise you intend to export to, or import into, the United States, write to the Commissioner of Customs, Washington, D.C., 20229. Send this reply to your inquiry to the Commissioner. Give a complete description of the merchandise and, when feasible, furnish samples and/illustrative material. Do not fail to supply the details specified in section 4 above if your original inquiry was deemed insufficient by this office.

TO

Whitman & Ransom
522 Fifth Avenue
New York, N.Y.

Signature: Martin L. Weiss, Acting Chief

Name: Duty Assessment Branch 6/8

Title:

GPO 938 686

PREVIOUS EDITIONS ARE OBSOLETE

CUSTOMS FORM 4311 (10-9-75)

STATEMENT OF STANLEY NEHMER, PRESIDENT

ECONOMIC CONSULTING SERVICES, INC.

ON BEHALF OF THE LUGGAGE AND LEATHER GOODS MANUFACTURERS OF AMERICA, INC.

Re Chapter 42

In its January 12, 1987 press release, the House Ways and Means Subcommittee on Trade requested written comments concerning the proposed conversion of the Tariff Schedules of the United States into the Harmonized Commodity Description and Coding System. In response to this request, I am submitting the following comments on behalf of the Luggage and Leather Goods Manufacturers of America, Inc.

Our review of Chapter 42 of the October 1986 edition of the Harmonized System has revealed a major problem in the classification of luggage, handbags, flat goods, and sports, travel, and similar bags. This problem involves the inclusion of a specific statistical break-out (as well as a mention in the headnotes) for articles made of "vulcanized fiber". We strongly believe that any mention of "vulcanized fiber" should be removed from this section of the Harmonized System.

Prior to arriving at this position, we discussed this issue with International Trade Commission (ITC) staff and officials of the U.S. Customs Service. From the ITC we learned that the new statistical break-out for "vulcanized fiber" (item number 4202.99.20.00 in the Harmonized System) has its origin in item number 774.4000 of the Tariff Schedules of the United States Annotated (TSUSA). This TSUS item is used for the classification of miscellaneous articles of "vulcanized fiber" and makes no reference to luggage or any other item now included in Chapter 42 of the Harmonized System. The ITC was unable to confirm whether or not actual import invoices had ever been checked prior to the creation of a specific break-out for "vulcanized fiber" articles in Chapter 42 of the Harmonized System. This should have been done in order to certify that luggage and/or other bags of "vulcanized fiber" are in fact being imported into the United States. Thus, it is unclear exactly how or why this new break-out was added to Chapter 42.

We learned even more startling news from the Customs Service. First, we were able to learn the definition of "vulcanized fiber" (several industry experts were unfamiliar with the term). It is a type of plastic that is derived by bonding or gelling many layers of paper material with a cross-linking solution. The solution is pressed out, and the result is a hard plastic material. Most importantly, we were informed that this process of manufacture is no longer used in this country or elsewhere. In fact, Customs has asserted that the reference to "vulcanized fiber" for an imported article is most likely an indication that the merchandise is being incorrectly classified. Thus, it is unclear to us exactly what was contained in the $2.3 million worth of goods that were imported under TSUS item 774.4000 in 1985. There is no reason to presuppose that luggage or similar items were included thereunder, and, if they were, that the classification was correct.

One additional point merits close attention. The column one rates of duty for luggage and other bags (i.e., those items which begin with "4202" in the Harmonized System) range from 4.7 percent ad valorem to 20 percent ad valorem. Of the thirty-two duty items, thirteen carry a 20 percent rate of duty. The glaring exception to this is the "Free" column one rate of duty that would be applied to "other" articles of "vulcanized fiber". We fear that importers will attempt to classify goods under this item of the Harmonized System in order to circumvent the rates of duty used in the remainder of this section. It is also interesting to note that, in the previous edition of the Harmonized System, "other" articles made of "other" than plastic sheeting or textile materials (where "vulcanized fiber" was included) carried a 20 percent ad valorem rate of duty in column one.

Accordingly, we strongly believe that the specific break-out for "other" articles of "vulcanized fiber", as well as the mention of "vulcanized fiber" in the headnotes of this section, should be removed from the Harmonized System. Since there does not appear to be any luggage, handbags, flat goods, sports, travel, or other similar bags made from "vulcanized fiber", there is no reason to provide for their classification in the Harmonized System. At the same time, including this item as proposed could contribute to circumvention of the tariff schedules.

I would be happy to answer any questions the Subcommittee on Trade might have regarding this submission.

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NILES, ILLINOIS 60648
312/647-1211

IMPORTERS AND MANUFACTURERS
TELEX: 867113 - [illegible] "QUALITY" - CABLE "MILLAN" CHICAGO
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COMMITTEE ON
RECEIVED
FEB 24 1987
WAYS AND MEANS

Joseph K. Dawley, Chief Counsel, W&M
U.S. House of Representatives, Rm 1102
Longworth House Office Bldg.
Washington, D. C. 20515

February 23, 1987

Dear Sir:

Upon reviewing the October 1986 publication of the conversion of the TSUS into the nomenclature structure of the Harmonized system, I realized that under heading 6209 and 6111 infant sets there will be a change in intent and legistration.

Only two or more garments listed in heading 6209 and 6111 qualify as sets, there is no provision for jackets/mittens - jackets/scarfs - Sunsuits/matching bonet - bootie set (sweater/hat/booties) - diaper sets (dress/panty). these garments will no longer be considered a set and this will change a uniform and established practice. Since these garments are imported together, are of corresponding sizes and intended to be worn together by the same person they should also be listed under heading 6209 and 6111.

Our understanding of the harmonized system intent is for standardization and simplification and not to change an existing tariff treatment.

Sincerely,

M & L INTERNATIONAL

Mr. Kurt Gutfreund
President

KG/dp

Sonke, Somers & Abbey
Counsellors at Law
Customs & International Trade Law

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Board of Trade Suite 1900
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600 Pennsylvania Ave., S.E. Suite 202
Washington, D.C. 20003 202.547.5050

New York - February 25, 1987

Mr. Joseph E. Dowley
Chief Counsel Committee on Ways and Means
U.S. House of Representatives, Room 1102
Longworth House Office Building
Washington, DC 20515

Re: Comments on the Harmonized System

Dear Mr. Dowley:

A news release dated Monday, January 12, 1987 invited the public to comment on the adoption of the Harmonized System (HS).

On behalf of our client M. Fabrikant & Sons, New York, New York, we wish to submit for your review the attached comments which were sent to the Secretary, Trade Policy Committee, Office of the U.S. Trade Representative (USTR) on January 28, 1987.

It is our contention that the provision for cultured pearls under Heading 7101 of the HS is flawed because temporarily strung cultured pearls now dutiable at 2.1% under item number 741.06, Tariff Schedules of the United States Annotated, would

become dutiable at 11% under the HS Heading 7116.10. This is an increase in duties of over 423%!

We have pointed out to the USTR that the President had directed them "to avoid tariff-rate changes to the extent practicable and to simplify the tariff where possible without rate changes significant for U.S. industry, workers, or trade."

If this issue is not addressed by the USTR we would appreciate your favorable action upon review of the HS.

We thank you for your consideration of our request and would appreciate an opportunity to discuss this matter further at your convenience.

Sincerely,

SERKO, SIMON & ABBEY

Joel K. Simon

JKS/dg
Enclosure

Serko, Simon & Abbey
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600 North Capitol Street, N.W. - Suite 712
Washington, D.C. 20001 - 202.347.5959

New York - January 29, 1987

Ms. Carolyn Frank
Secretary, Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C. 20506

Re: COMMENTS ON THE HARMONIZED SYSTEM
HEADING 7101

Dear Ms. Frank:

On behalf of our client M. Fabrikant & Sons, we wish to submit the following comments on the third edition of the proposed conversion of the Tariff Schedules of the United Stats Annotated (TSUSA) into the nomenclature structure of the Harmonized System (HS).

Item number 741.06, TSUSA, reads as follows:

	Natural or cultured pearls and parts thereof, drilled or not drilled, but not strung (except temporarily)		
741.06	Cultured	x	2.1% ad. val.

The related provision under the HS appears to be heading 7101 which reads as follows:

I. NATURAL OR CULTURED PEARLS AND PRECIOUS OR SEMIPRECIOUS STONES

7101	Pearls, natural or cultured, whether or not worked or graded but not strung, mounted or set: ungraded pearls, natural or cultured, temporarily strung for convenience of transport:	
	Cultured pearls:	
7101.21.00	Unworked	2.1%
7101.22.00	Worked	2.1%

M. Fabrikant & Sons import large quantities of temporarily strung cultured pearls from Japan. The pearls are strung only for the convenience of transport. They are being classified under the provision for cultured pearls under item number 741.06, TSUSA, at 2.1%.

Our client has informed us that, as far as they know, all temporarily strung cultured pearls must meet certain quality criteria before they are exported from Japan. An attempt is also made, prior to export, to see that the pearls are all the same color or shade. To their knowledge, there are no importations of natural, temporarily strung cultured pearls.

A review of heading 7101 reveals that our clients importations are not classifiable under that provisions of the HS. The only applicable provision appears to be heading 7116.10.20 under the HS which provides for cultured pearl articles dutiable at 11%. This is an increase in duty of over 423%!

If this interpretation is correct, the entire cultured pearl industry in this country would be affected since almost

all the cultured pearl importations are both graded and temporarily strung.

Attached for your review is a portion of the "Harmonized System Handbook" of August 1986. It states, on page 2:

> The conversion was undertaken at the request of the President with the directive to avoid tariff-rate changes to the extent practicable and to simplify the tariff where possible without rate changes significant for U.S. industry, workers, or trade.

Because of the impact on the entire cultured pearl industry, we would respectfully request that the term "ungraded" be replaced by the term "graded" in the headnotes for heading 7101.

Alternatively, we would request that the term "except temporarily" be inserted after the words "but not strung" in the headnotes for heading 7101.

We thank you for your attention to this matter and request an opprotunity to discuss this matter further at your convenience.

Sincerely,

SERKO, SIMON & ABBEY

Joel K. Simon

JKS/ms
Enclosure

STATE OF NEW YORK
ss:
COUNTY OF NEW YORK

AFFIDAVIT OF
KENNETH PUKEL

I, Kenneth Pukel, hereby state that:

1. From 1974 until January 3, 1984 I was the National Import Specialist for pearls with the United States Customs Service.

2. In my position I was responsible for the Customs classification of pearls.

3. Temporarily strung cultured pearls were classified by the Customs Service as cultured pearls drilled, but not strung under item 741.06 of the Tariff Schedules of the United States with duty at 2.1%.

4. Temporarily strung pearls were graded as to color, quality and size.

5. I have examined the Harmonized System and have read heading 7101 of the Harmonized System.

6. I believe that the language of heading 7101 excludes the classification of temporarily strung graded pearls under its provisions.

7. I believe that temporarily strung, graded cultured pearls will be classified in the Harmonized System under item 7116.10.20 for articles of cultured pearls with duty at 11%, a significant increase in duty from classification under the Tariff Schedules of the United States.

8. I am presently employed as a technical advisor by the law firm of Serko, Simon & Abbey, One world Trade Center, New York, New York 10048.

_____

Kenneth Pukel

State of New York;
County of New York

Sworn to before me this
_____ day of January, 1987

Serko, Simon & Abbey
Counsellors at Law
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New York - February 25, 1987

Mr. Joseph K. Dowley
Chief Counsel Committee on Ways and Means
U.S. House of Representatives, Room 1102
Longworth House Office Building
Washington, DC 20515

Re: Comments on the Harmonized System

Dear Mr. Dowley:

A news release dated Monday, January 12, 1987 invited the public to comment on the adoption of the Harmonized System (HS).

On behalf of our client Midwest Importers of Cannon Falls Inc. of Cannon Falls, Minnesota, we wish to submit for your review the attached comments which were sent to the Secretary, Trade Policy Committee, Office of the U.S. Trade Representative (USTR) on January 28, 1987.

It is our contention that the duty rate of 17% for Heading 9505.10.50 of the HS was incorrectly formulated.

According to the 1983 ITC conversion table, this rate was arrived at by averaging duty rates of items 534.9700, 748.1500 and 748.2100 of the TSUS. As noted on page 8 of our referenced submission, many other TSUS item numbers should have been used to calculate the duty rate for 9505.10.50.

Our client imports numerous Christmas ornaments/articles made of wood, paper, metal, ceramic, textile materials, etc. which are suitable for Christmas festivities. It is our opinion that many of these products, which are dutiable at rates as low as 3.2%, would become dutiable at 17% under the HS.

We have pointed out to the USTR that the President had directed them "to avoid tariff-rate changes to the extent practicable and to simplify the tariff where possible without rate changes significant for U.S. industry, workers, or trade."

The current low rates of duty for these products makes them readily available on the retail market. The duty increase to 17% could not be absorbed by our client and would therefore, have to be passed on to the ultimate consumer.

Christmas articles constitute an important portion of our client's business. Any reduction in the retail sale of their products would ultimately affect their employees.

If this issue is not addressed by the USTR we would appreciate your favorable action upon review of the HS.

We thank you for your consideration of our request and would appreciate an opportunity to discuss this matter further at your convenience.

Sincerely,

SERKO, SIMON & ABBEY

Joel K. Simon

JKS/dg
Enclosure

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New York - January 29, 1987

Ms. Carolyn Frank
Secretary, Trade Policy Staff Committee
Office of the U.S. Trade Representative, Room 521
600 17th Street, N.W.
Washington, D.C. 20506

Re: COMMENTS ON HARMONIZED SYSTEM
HEADING 9505

Dear Ms. Frank:

On behalf of our clients Midwest Importers of Cannon Falls, Inc., Cannon Falls, Minnesota and Kurt S. Adler Inc., New York, New York, we wish to submit the following comments on the third edition of the proposed conversion of the Tariff Schedules of the United States (TSUS) into the nomenclature structure of the Harmonized Commodity Description and Coding System (HS).

Our clients import numerous Christmas ornaments/articles which are made of wood, paper, metal, ceramic, textile materials, etc. These articles frequently have Christmas motifs.

CURRENT CUSTOMS TREATMENT OF CHRISTMAS ARTICLES

Currently under TSUS, wooden Christmas articles/ornaments are classified under the provision for articles of wood, not specifically provided for (nspf), in item 207.00, dutiable at

the rate of 5.1%. In support of this, note the attached copy (Exhibit A) of a memorandum for the U.S. Trade Representative, dated January 2, 1987. This memorandum refers to actions concerning the Generalized System of Preferences (GSP). Annex B of this memorandum classifies wood Christmas ornaments under TSUS 207.0020. Also note attached copy of Customs Headquarters letter 048411C, dated March 14, 1977 (Exhibit B).

Metal Christmas articles/ornaments are classified under the provision for articles of iron or steel, nspf in TSUS item 657.25 at 5.7%.

Christmas candles are classified under the provision for candles and tapers at 5.8% in TSUS item 755.25.

Ceramic Christmas articles/ornaments of nonbone chinaware or of sub-porcelain are classified under TSUS item 534.94 at 9%. Note attached copy of Customs Headquarters letter 74-037689, dated December 19, 1974 (Exhibit C).

Brass Christmas articles/ornaments are classified under the provision for articles of copper in TSUS item 657.35 at 5%. Note attached copy of Customs Headquarters letter 803407, dated July 15, 1982, regarding metal Christmas ornaments (Exhibit D).

Textile Christmas articles/ornaments other than apparel or furnishings are classified under the provision of articles nspf of textile materials in TSUS item 386.13 at 10%. Note attached copy of T.D. 56545(13), regarding textile material, nspf,

Christmas decoration (Exhibit E).

Christmas greeting cards are classified under the provision for greeting cards with title or other wording under TSUS item 274.05 at 4.9%.

Music boxes including those with Christmas motifs, are classified under the provision for music boxes TSUS item 725.50 at 3.2%.

HARMONIZED SYSTEM CLASSIFICATION

Heading 9505 of the HS reads as follows:

9505		Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:
9505.10		Articles for Christmas festivities and parts and accessories thereof:
		Christmas ornaments:
9505.10.10	00	Of glass . . . . .
9505.10.20	00	Other. . . . .
9505.10.30	00	Nativity scenes and figures thereof
		Other:
9505.10.40	00	Of plastics. . . . .
9505.10.50	00	Other. . . . .
9505.90		Other
9505.90.20	00	Magic tricks and practical joke articles; parts and accessories thereof . . . . .
9505.90.40	00	Confetti, paper spirals or streamers, party favors and noise

	makers: parts and accessories thereof. . . . .
9505.90.60 00	Other. . . . .

The explanatory notes to the Brussels Nomenclature dated June 1967 for 97.05 (Currently 9505 of the HS) gives examples of Christmas tree decorations and similar articles for Christmas festivities. The explanatory notes are part of the history of the development of the HS and help to interpret the new law.

The note states in part that:

These articles include:
(1) Various decorative articles made of paper, metal foil, glass fibre, etc. (e.g., tinsel, stars and icicles); artificial snow; decorative articles made of thin blown glass (coloured balls, bells, lanterns, etc.); Christmas tree candle-holders, etc.

(2) A range of articles traditionally used at Christmas festivities, e.g., artificial Christmas trees (these are sometimes of the folding type), Nativity scenes (cribs) and figures for Nativity scenes (but not including statuettes, statues and the like of a kind used for decorating places of worship), Christmas crackers, Christmas stockings and imitation yule logs.

We believe that item (2) refers to <u>articles</u> classified under 9505.10.30, 9505.10.40 and 9505.10.50, and that item (1) refers to <u>ornaments</u> classified under 9505.10.10 and 9505.10.20.

Regarding classification of goods in the HS, note General Rules of Interpretation (GRI) 3 which states as follows:

3. When, by application of rule 2(b) or for any other reason, goods are, <u>prima facie</u>, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. (Emphasis added).

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

There are no specific provisions in the Harmonized System for Christmas articles or ornaments other than the provisions of item 9505.

Since these articles under the tariff schedules were classified under the general provisions for "articles of" wood, metal, textile, etc., such a classification under the Harmonized System would be precluded by the language of 9505 read in conjunction with Rule 3a of the GRI. As rule 3a states, "the heading which provides the most specific description shall be preferred to headings providing a more general description."

It is our concern that the Customs Service in classifying

articles or ornaments with a Christmas motif, has no choice but to classify those items under heading 9505 of the Harmonized System. This heading is far more specific than "articles of wood," "of textile material," "of metal," etc.

As a result of this new classification, we believe that there will be significant increases in Customs duties for many items. It is our belief that in cross-referencing TSUS item numbers and HS headings, it is necessary to use similiar TSUS merchandise descriptions in calculating HS duty rates.

The Harmonized System Handbook, August 1986, states on page 2:

"The conversion was undertaken at the request of the President with the directive to avoid tariff-rate changes to the extent practicable and to simplify the tariff where possible without rate changes significant for U.S. industry, workers, or trade." (See Exhibit F)

According to the conversion table to the Harmonized System 1983 USITC Publication 1400, Annex II, item 9505.10.10 is taken from the provision for glass Christmas ornaments, item 545.87 of the TSUS at the same rate of duty; item 9505.10.20 is taken from the provision for Christmas tree ornaments, item 772.95 of the TSUS at the same rate of duty; and item 9505.10.30 is taken from the provision for nativity scenes and other religious articles, item 772.97 at the same rate of duty.

RATE OF DUTY FOR PLASTIC CHRISTMAS ARTICLES WAS ERRONEOUSLY CALCULATED

Item 9505.10.40, other Christmas articles of plastic, is derived from the provision for artificial flowers, trees, etc. wholly or almost wholly of rubber or plastics classified under item 748.20 of the TSUS, at the same rate of duty, 4%. However, this provision of the TSUS, only provides for such artificial foliage when produced by assembling parts by "binding with flexible wire, paper, textile materials, or foil, or by gluing or by similar methods" (see headnote 1 iii of subpart 3, part 7, Schedule 7, TSUS). Most artificial flowers and foliage are not classified under this provision because they are made in a manner other than described above (by "pop-on" parts) and are classified under item 774.45 TSUS with duty at 3.4%.

Furthermore, there are other Christmas articles of plastic, which are not ornaments, such as plastic snowballs and other plastic articles which are currently classified under item 772.97 with duty at 5.3%, as plastic Christmas articles, as opposed to Christmas tree ornaments. Under the proposed Harmonized System, these articles would be classified under 9505.10.40 with duty at 8.4%. We believe that the proper rate of duty for this provision should reflect a combination of the rate for 772.97 and part of item 774.45. In any event, the rate should be no greater than 5.3%.

RATE OF DUTY FOR OTHER CHRISTMAS

ARTICLES WAS ERRONEOUSLY CALCULATED

Item 9505.10.50 covers other Christmas articles of material other than plastic and carries a duty rate of 17%. According to the 1983 ITC conversion table, this rate was arrived at by averaging duty rates of items 534.9700, 748.1500 and 748.2100 of the TSUS. With the exception of articles classified under item 748.1500, we do not know what articles presently classified under items 534.9700 and 748.2100 would be considered to be Christmas articles. Since glass or ceramic flowers are specifically excluded from 748.2100 by headnote 1i to Subpart B, Part 7 Schedule 7, and textile flowers are provided for under 389.6100 with duty at 9% there are very few items classified under 748.2100 which could conceivably be called Christmas articles. There are, however, many articles of wood, paper, textile, earthenware, metal, and wax (candles) which are Christmas articles and not ornaments, which would be classified under 9505.10.50.

We have restated below a list of the TSUS item numbers and rates of duty for 1987. Import statistics for Christmas articles under these provisions are not available because they are not broken out statistically in the TSUS.

TSUS ITEM NO.	1987 DUTY RATE
207.0020	5.1%
274.05	4.9%
386.13	10%
534.81	2¢ per dz. pcs.+ 7%
534.84	7%
534.94	9%
657.25	5.7%
657.35	5%
725.50	3.2%
755.25	5.8%

The provision for: other articles for Christmas festivities and parts and accessories, in heading 9505.10.50, is so vague that we can foresee years of litigation regarding types of items which could be classified under this heading.

In order to remove any ambiguous interpretations of heading 9505.10.50, we recommend that other headings be added to provide for specific materials, aside from plastic, which is provided for in heading 9505.10.40. We submit that specific headings for wood, metal, ceramic and textile materials be added. These additional headings would provide similiar rates of duty as that found in the current TSUS, for similiar products. This would be in line with the President's directive

(previously cited) to avoid tariff-rate changes to the extent possible.

CONCLUSION

We propose the following new headings, descriptions and duty rates:

Heading No.	Description	Duty Rate
9505.10.40	Music boxes	3.2%
9505.10.50	Candles & tapers	5.8%
	Other:	
9505.10.60	Of plastic	4.2%
9505.10.70	Of wood	5.1%
9505.10.80	Of textile	10%
9505.10.90	Of ceramic	7%
9505.20.00	Of nonbone chinaware or of sub-porcelain . .	9%
9505.20.10	Of iron or steel	5.7%
9505.20.20	Of brass	5%
9505.20.30	Other	4%

We thank you for your consideration of our request and would appreciate an opportunity to discuss this matter further at your convenience.

Sincerely,

SERKO, SIMON & ABBEY

Joel K. Simon

JKS/ms
Enclosure

BRUKER POWER INC. TEL: 202-898-1659 Jan 05.87 10:51 No.022 P.04

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(A)

THE WHITE HOUSE

WASHINGTON

January 2, 1987

MEMORANDUM FOR THE UNITED STATES TRADE REPRESENTATIVE

SUBJECT: Actions Concerning The Generalized System of Preferences

Pursuant to sections 502(b)(8) and 504 of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2462(b)(8) and 2464), I am hereby acting to modify the application of duty-free treatment under the Generalized System of Preferences (GSP) currently being afforded to certain beneficiary developing countries, and to make findings concerning steps by certain beneficiary developing countries to afford internationally recognized worker rights to workers in such countries.

Specifically, I have determined, under the provisions of section 504(c)(2) of the Act and after taking into account the factors listed in sections 501 and 502(c) of the Act (19 U.S.C. 2461 and 2462(c)), that certain beneficiary developing countries have demonstrated a sufficient degree of competitiveness (relative to other beneficiary developing countries) with respect to particular eligible articles that section 504(c)(2)(B) should apply to such articles. Such countries are enumerated in Annex A opposite the Tariff Schedules of the United States (TSUS) items applicable to each article.

Second, under the terms of section 504(c)(3) of the Act, I am hereby waiving the application of section 504(c) with respect to particular eligible articles from specified beneficiary developing countries. I have received the advice of the United States International Trade Commission as to any industries in the United States which would likely be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c) of the Act, that such waivers are in the national economic interest of the United States. The countries to be afforded such waivers for particular eligible articles are enumerated in Annex B opposite the TSUS items applicable to each article.

Finally, after considering various private sector requests for review concerning worker rights in certain beneficiary developing countries, and in accordance with section 502(b)(8) of the Act, I have determined that the following beneficiary developing countries have taken or are taking steps to afford

internationally recognized worker rights (as defined in section 502(a)(4) of the Act): Guatemala, Haiti, the Republic of Korea, the Philippines, Suriname, Taiwan, and Zaire. However, I have determined that Romania, Paraguay, and Nicaragua, previously designated as beneficiary developing countries, are not taking steps to afford such internationally recognized worker rights. Therefore, I intend to notify the Congress of the United States of my intention to remove Romania and Nicaragua from the list of designated beneficiary developing countries for purposes of the GSP, and to suspend the GSP eligibility of Paraguay. Finally, I am continuing to review the status of such worker rights in another beneficiary developing country, Chile.

These determinations shall be published in the Federal Register.

Ronald Reagan

BROKER POWER INC. TEL: 202-898-1659 Jan 05,87 10:51 No.022 P.06

Annex A

Determination of Sufficient Competitiveness

TSUS	Country
107.78	Taiwan
121.56	Argentina
130.32	Argentina
131.20	Argentina
135.30	Mexico
137.04	Mexico
141.98	Mexico
146.12	Argentina
148.30	Mexico
149.30	Mexico
152.54	Brazil
166.40	Mexico
167.05	Mexico
168.98	Mexico
192.21pt.	Columbia 1/
200.91	Mexico
202.66	Taiwan
206.30	Taiwan
222.50	Taiwan
240.14	Taiwan
245.20	Brazil
245.80	Mexico
315.25	Mexico
337.40	Hong Kong Rep. of Korea
355.81	Taiwan
389.61	Hong Kong Taiwan
402.12	Brazil
406.96	Brazil
407.19	Brazil
408.72	Rep. of Korea Taiwan
413.24	Rep. of Korea
416.45	Taiwan
418.18	Brazil
420.60	Mexico
421.06	Taiwan
425.82	Brazil
427.84	Brazil
428.38	Brazil
437.57	Mexico
439.50	Singapore
445.42	Taiwan
445.46	Mexico
490.94	Brazil
511.64	Mexico
515.61	Mexico
515.64	Mexico
517.24	Brazil
520.31	Brazil
520.61	Brazil
532.22	Rep. of Korea Taiwan
534.11	Taiwan
534.91	Taiwan
535.12	Mexico
535.31	Brazil
540.21	Mexico
542.77	Mexico
544.51	Taiwan
545.53	Taiwan
545.67	Taiwan
547.37	Taiwan
606.37	Brazil
606.44	Brazil
609.14	Brazil
610.65	Rep. of Korea
610.70	Taiwan
610.74	Rep. of Korea Taiwan
610.82	Rep. of Korea Taiwan
610.88	Taiwan
612.03	Mexico
612.62	Brazil
613.18	Taiwan
626.40	Mexico
632.42	Brazil
642.17	Rep. of Korea
642.45	Mexico
646.30	Rep. of Korea
646.65	Taiwan

1/ Includes 192.2110, 192.2120, 192.2130, 192.2140, 192.2150 and 192.2160.

TSUS	Country
646.72	Taiwan
646.92	Taiwan
646.95	Taiwan
646.97	Taiwan
647.03	Taiwan
647.05	Taiwan
648.80	Hong Kong Rep. of Korea Taiwan
648.85	Rep. of Korea Taiwan
648.89	Taiwan
648.93	Taiwan
648.95	Taiwan
649.37	Taiwan
650.21	Taiwan
650.89	Hong Kong
651.23	Taiwan
651.31	Taiwan
651.37	Hong Kong
651.46	Rep. of Korea
651.48	Hong Kong Rep. of Korea Taiwan
651.55	Taiwan
652.03	Rep. of Korea
652.24	Taiwan
653.00	Rep. of Korea
653.35	Taiwan
653.37	Taiwan
653.38	Taiwan
653.48	Taiwan
653.52	Taiwan
653.94	Rep. of Korea
653.96	Taiwan
654.00	Taiwan
654.08	Taiwan
654.25	Taiwan
654.30	Taiwan
654.35	Taiwan
654.45	Rep. of Korea Taiwan
654.60	Hong Kong Taiwan
654.70	Hong Kong
654.75	Taiwan
656.15	Mexico
657.35	Taiwan
657.40	Taiwan
660.42	Brazil
660.67	Brazil Mexico
660.71	Brazil
660.97	Singapore
661.06	Mexico
661.09	Singapore
661.20	Mexico
661.35	Rep. of Korea
661.67	Brazil
661.94	Hong Kong Taiwan
662.15	Argentina
664.08	Brazil
664.10	Mexico Taiwan
672.16	Taiwan
674.34	Rep. of Korea Taiwan
674.35	Taiwan
674.42	Taiwan
676.15	Rep. of Korea
676.20	Rep. of Korea Taiwan
676.30	Hong Kong
676.56	Taiwan
678.50	Brazil
680.14	Taiwan
680.19	Taiwan
683.01	Rep. of Korea Taiwan
683.12	Mexico

TSUS	Country
683.70	Hong Kong
	Taiwan
683.80	Hong Kong
684.10	Hong Kong
	Taiwan
684.40pt.	Hong Kong 1/
684.48	Taiwan
684.53	Taiwan
684.55	Taiwan
684.70	Rep. of Korea
685.06	Taiwan
685.14	Rep. of Korea
	Taiwan
685.18	Rep. of Korea
685.22	Hong Kong
	Rep. of Korea
685.32	Mexico
	Taiwan
685.39	Hong Kong
	Rep. of Korea
685.40	Hong Kong
	Taiwan
685.70	Hong Kong
686.18	Taiwan
686.90	Rep. of Korea
688.18	Taiwan
688.34	Hong Kong
	Taiwan
688.41	Hong Kong
688.42	Mexico
	Rep. of Korea
692.32	Rep. of Korea
692.60	Taiwan
703.72	Taiwan
705.82	Taiwan
705.83	Taiwan
706.61	Taiwan
708.47	Hong Kong
711.31	Brazil
712.49	Brazil
722.08	Hong Kong
	Rep. of Korea
	Taiwan
722.11	Hong Kong
	Rep. of Korea
723.30	Brazil
724.45	Hong Kong
	Mexico
725.01	Rep. of Korea
725.03	Rep. of Korea
725.32	Taiwan
725.46	Rep. of Korea
726.25	Taiwan
727.11	Taiwan
727.15	Taiwan
727.23	Taiwan
727.25	Taiwan
727.29	Taiwan
	Yugoslavia
727.35	Taiwan
727.40	Taiwan
727.47	Taiwan
727.59	Taiwan
727.65	Taiwan
727.86	Taiwan
730.29	Brazil
730.94	Rep. of Korea
731.70	Taiwan
732.52	Taiwan
732.62	Taiwan

1/ Includes 684.4010 and 684.4015.

TSUS	Country
734.15	Taiwan
734.20	Taiwan
734.25	Hong Kong
734.42	Brazil
734.77	Rep. of Korea
734.88	Taiwan
734.91	Taiwan
735.09	Rep. of Korea
	Taiwan
735.10	Taiwan
735.20	Rep. of Korea
737.15	Hong Kong
737.42	Rep. of Korea
737.65	Taiwan
737.80	Hong Kong
737.95	Mexico
740.11	Hong Kong
740.12	Hong Kong
740.13	Hong Kong
740.14	Hong Kong
740.38	Rep. of Korea
741.50	Hong Kong
745.43	Taiwan
745.68	Taiwan
748.55	Taiwan
750.20	Taiwan
750.40	Hong Kong
750.45	Rep. of Korea
	Taiwan
750.47	Taiwan
750.65	Rep. of Korea
	Taiwan
750.70	Taiwan
755.23	Hong Kong
770.40	Mexico
771.41	Taiwan
772.06	Taiwan
772.15pt.	Hong Kong 1/
772.20	Taiwan
772.51	Taiwan
772.60	Rep. of Korea
772.80	Taiwan
772.95	Taiwan
772.97	Taiwan
773.05	Taiwan
773.10	Taiwan
774.45	Hong Kong
774.50	Taiwan
774.55pt.	Hong Kong 1/
790.10	Taiwan
790.55	Taiwan — Pressure Sensor
790.60	Taiwan
791.19	Argentina
791.27	Brazil
791.28	Brazil
791.60	Taiwan

1/ Excludes picture frames.
2/ Includes 774.5505, 774.5510, 774.5515, 774.5517, 774.5520, and 774.5525.

Annex B

Competitive Need Waivers

TSUS	Country
107.48	Uruguay
131.35	Thailand
137.88	Colombia
140.14	Thailand
146.44	Philippines
147.54	Colombia
155.20	Colombia
	Philippines
192.17	Colombia
206.60	Taiwan
207.00	Taiwan 1/
222.42	Philippines
222.44	Philippines
222.64	Philippines
240.38	Philippines
355.81	Colombia
386.13pt.	Taiwan 2/
389.61	Macau
455.18	Colombia
455.20	Colombia
490.24	Malaysia
	Philippines
534.87	Taiwan
534.94	Taiwan
622.25	Malaysia
652.70	Rep. of Korea
676.15	Singapore
676.30	Singapore
676.56	Malaysia
	Singapore
684.10	Singapore
684.15	Singapore
684.58	Hong Kong
	Singapore
685.14	Malaysia
	Singapore
685.25	Hong Kong
685.28	Singapore
685.32	Hong Kong
	Malaysia
	Singapore 3/
685.39	Singapore
685.40	Singapore
685.70	Malaysia
	Singapore 4/
685.90	Hong Kong
	Singapore
687.30	Malaysia
688.42	Singapore
	Thailand
709.27	Singapore
713.17	Rep. of Korea
724.45	Hong Kong
725.05	Rep. of Korea
	Taiwan
727.11	Philippines
727.13	Philippines
734.20	Hong Kong
734.54	Rep. of Korea
	Taiwan

1/ 207.0020-wood Christmas ornaments only.
2/ 386.1343pt.-wall banners only.
3/ Includes 685.3260 and 685.3262 only, for Singapore.
4/ Includes 685.7002, 685.7004, 685.7010, 685.7015, 685.7020, 685.7025, and 685.7080 for Singapore only.

TSUS	Country
737.07	Hong Kong
	Macau
737.15	Rep. of Korea 3/
	Taiwan 3/
737.21	Hong Kong
737.23	Rep. of Korea
	Taiwan
737.28	Rep. of Korea
	Taiwan
737.30	Hong Kong
	Taiwan
737.33	Rep. of Korea
	Hong Kong
737.40	Rep. of Korea
	Taiwan
737.47	Rep. of Korea
737.49	Hong Kong
	Taiwan
737.51	Rep. of Korea
737.60	Hong Kong
737.80	Macau
	Hong Kong 6/
	Macau 7/
737.95pt.	Rep. of Korea 7/
	Taiwan 7/
740.05	Thailand
740.38pt.	Hong Kong 8/
748.20	Taiwan
748.21	Taiwan
756.04	Philippines
772.15pt.	Hong Kong 9/
	Taiwan 9/
772.95	Hong Kong
774.55pt.	Hong Kong 10/
792.50	Philippines

3/ 737.1560 only, for Republic of Korea and Taiwan.
6/ 737.9525 only for Hong Kong.
7/ 737.9555 only for Macau, Republic of Korea and Taiwan.
8/ Watch bracelet sets valued at less than $12 per dozen.
9/ Plastic picture frames only.
10/ 774.5580 and 774.5585 only.

119

737.20
207.06

[B]

MAR 14 1977

CLA-2:R:CV:MA
048411 s

In a letter dated November 8, 1976, you inquired as to the dutiable status of certain Christmas tree ornaments manufactured in Taiwan. Samples were submitted for examination.

The sample designated as Santa's Family christmas tree ornaments is a boxed set of wooden ornaments consisting of a wooden Santa doll with a fur beard, spectacles, textile stocking cap, and holding a gift box; a Mrs. Santa doll with textile hair, spectacles and holding a rolling pin; an angel doll with textile hair holding a prayer book; a snowman figure. All these articles measure approximately 2 inches in height and have a gold loop for hanging.

The sample designated as Musical Kids Christmas Tree Ornaments consists of a boxed set of four wooden figures sitting on stools and playing various musical instruments. These figures measure approximately 2 inches in height and have a gold loop for hanging.

The figures of Mr. and Mrs. Santa Claus and the angel figure which are part of Santa's Family are commonly and commercially known as dolls. Consequently, they are classifiable under the provision for dolls in item 737.20, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 17.5 percent ad valorem.

7895

[redacted] .048411 2

The Musical Kids assortment and the snowman from Santa's Family are classifiable under the provision for articles not specially provided for, of wood, in item 207.60, TSUS, and dutiable at the rate of 8 percent ad valorem.

Pursuant to Executive Order 11888 of November 24, 1975, various products from certain eligible developing countries have been granted free entry. Articles classifiable under item 207.60, TSUS, which have been produced in Taiwan are included among the eligible articles and entitled to free entry under the Generalized System of Preferences if otherwise qualified. For your information we are enclosing a copy of General Headnote 3(c), TSUS, which sets forth the requirements for free entry under the Generalized System of Preferences.

Sincerely yours,

(Signed) A. P. [illegible]
Salvatore E. Caramagno
Director
Classification and Value Division

Enclosure

121

DEC 13 1974

[c]

Dear Mr.

This is in reference to your letter of December 2d, 1974, on behalf of [redacted] concerning the dutiable status of a [redacted] decorated Christmas plate. Mr. [redacted] is of the opinion that his imported article, produced in limited edition, is a work of art entitled to entry free of duty.

All merchandise imported into the Customs territory of the United States is subject to duty on its full appraised value and total quantity unless specifically exempted. Item 765.25, Tariff Schedules of the United States (TSUS), provides for free entry of certain original works of the free fine arts. However, this provision is limited to creations that are original in design, conception, and execution, as distinguished from the works of skilled craftsmen that are representative of the decorative or industrial arts.

The article in question is not an original work of the free fine arts, but a reproduction by skilled artisans and craftsmen. Accordingly, the article in question is not classifiable under item 765.25, TSUS, and, as there are no other exemptions which would be applicable, the merchandise is subject to duty.

Art and ornamental ceramic articles, of porcelain, are provided for under item 534.94, TSUS, with duty at the rate of 22.5 percent ad valorem.

If we can provide any additional information or be of further assistance, please feel free to call on us.

Sincerely yours,

[redacted]

for
Leonard Lehrman
Assistant Commissioner
Operations and Rulings

Headnote 3, Schedule 3, TSUS, defines the term "ornamented" for tariff purposes and tooling is one of the forms of ornamentation specifically named in that headnote. In addition, Section (b)(iii) of Headnote 3 provides that tooling is not required to have a separate existence for [illegible] article on which it appears

(D)

[D]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

JUL 15 1982

CLA-2-[illegible]:C:E:S)-306
033407

Dear

In a letter dated April 19, [illegible] you requested an [illegible] dutiable status of bicycle and tricycle ornaments manufactured in Taiwan.

The bicycle and tricycle ornaments are composed of iron and are painted in various colors. They are 3 inches high, 3 inches long and 2 inches wide. Each is equipped with a string loop to facilitate hanging on a Christmas tree. The ornaments are facsimiles of old fashion bicycles and tricycles and do not faithfully represent the actual articles in specific detail.

The ornaments are classifiable under the provision for articles of iron or steel, not coated or plated with precious metal in item 657.25, Tariff Schedules of the United States, and dutiable at the rate of 8.1 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations 19 C.F.R. 177.1(a)(1).

Sincerely,

033407

Alice H. Elgion
Acting Area Director
New York Seaport

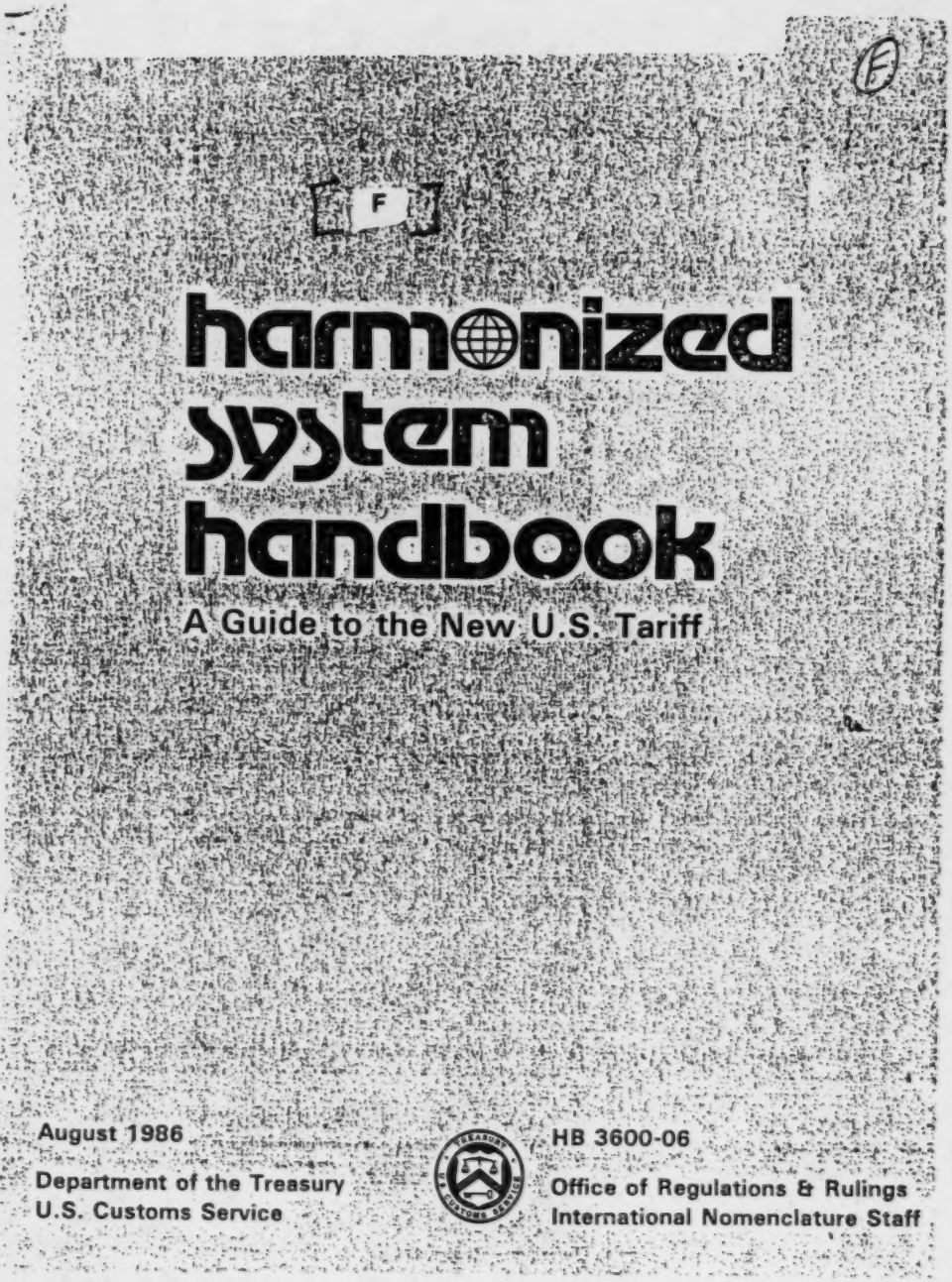
chinaware or of subporcelain: Household wares not covered in *item 533.63 to 533.69:* Other articles, in *items 533.73 to 533.77*, TSUS, depending upon value of the plates per dozen. Bureau letter dated October 25, 1965. (444.21)

T.D. 56545(11) *Articles, of textile materials, nspf. Cotton net bag.*—A cotton net bag with a draw-string type of closure, made from cotton yarns which are knotted together in series of knots to give it a netted appearance, classifiable under the provision for Articles not specially provided for, of textile materials: * * * Other articles, not ornamented: Of cotton: * * * Other, in *item 386.50*, TSUS. Bureau letter dated July 16, 1965. (017.42)

T.D. 56545(12) *Articles, of textile materials, nspf. Elastic straps.*—Elastic straps for holding ice hockey shin guards in place, measuring one inch in width and 15 inches in length, and having a hook and pile locking device attached to each end, are classifiable under the provision for Articles not specially provided for, of textile materials: * * * Other articles not ornamented: * * * Of man-made fibers: * * * Other, in *item 389.60*, TSUS. Bureau letter dated October 1, 1965. (492.23)

T.D. 56545(13) *Articles, of textile materials, nspf. Paper and paperboard articles, nspf. Christmas decoration.*—Christmas novelty door ringers in various Christmas styles such as Santa Claus, Snowmen, Angels, and dolls made of textile materials with metal bells attached and decorated with fancy design, pom-poms, braid applique, and fringe, are classifiable under the provision for Articles not specially provided for, of textile materials: * * * Other articles ornamented, in *item 386.05*, TSUS. Christmas type novelty door ringers shaped like a snowman caricature, consisting mainly of a woven rayon fabric backed with paper cardboard, not ornamented, are classifiable under the provision for Articles not specially provided for, of textile materials: * * * Other articles not ornamented: * * * Of man-made fibers: * * * Other, in *item 389.60*, TSUS, if in chief value of man-made fibers, or, if in chief value of paper, classifiable under the provision for: Articles of * * * paper, of paperboard * * * not specially provided for: * * * Other: * * * Other, in *item 256.90*, TSUS. Bureau letter dated September 30, 1965. (492.122)

T.D. 56545(14) *Asbestos, and articles of. Copper articles. Rubber articles, nspf. Asbestos cloth metallic packing.*—Metallic packing, used in the plumbing and electrical industries, coated with natural rubber is classifiable, if in chief value of asbestos, under the provision for Articles not specially provided for, of asbestos, in *item 518.51*, TSUS; if in chief value of brass, under the provision for Articles of


F
harmonized
system
handbook
A Guide to the New U.S. Tariff
August 1986
Department of the Treasury
U.S. Customs Service
HB 3600-06
Office of Regulations & Rulings
International Nomenclature Staff

THE HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM AND THE UNITED STATES TARIFF

Background.

For decades, the international trading community has confronted difficulties caused by the number of diverse classification systems covering goods moving in international trade. This situation has complicated the preparation of customs and transport documents, impeded a wider use of electronic data processing in international transactions, hampered the analysis of trade data, and created uncertainty in the negotiation and interpretation of trade agreements.

In 1970, representatives of the Customs Cooperation Council (CCC) discussed these problems with other international organizations and, at a meeting of the Economic Commission for Europe, it was agreed that the CCC was the organization best suited to undertake a study of commodity description and coding with a view to developing a system capable of meeting the principal requirements of customs authorities, statisticians, carriers and producers. This study and subsequent work resulted, some 13 years later, in the completion of the "Harmonized Commodity Description and Coding System", and the establishment of a new international convention for its implementation. The convention on the

2

Harmonized System was approved by the CCC in June 1983. The convention is reproduced as Annex I. International implementation of the system is targeted for January 1, 1988. Over the years almost 60 countries and more than 20 international organizations took part in this effort.

The conversion of the Tariff Schedules of the United States into the nomenclature structure of the Harmonized System represents an expansion of the core structure of the Hasrmonized System to provide for national tariff and statistical requirements. The conversion of the U.S. tariff was done by the United States International Trade Commission (USITC) and a full explanation of how the conversion was accomplished can be found in their report to the President. The conversion was undertaken at the request of the President with the directive to avoid tariff-rate changes to the extent practicable and to simplify the tariff where possible without rate changes significant for U.S. industry, workers, or trade. The USITC report to the President was made in June 1983, and was made public. Subsequently, under the direction of the Office of the United States Trade Representative, public hearings were held on the report and the draft conversion of the tariff. Based on these hearings and a review by the Administration, an amended version of the proposed tariff was published in September 1984. On the basis of further reviews, adjustments resulting from GATT negotiations, and legislated

THE NATIONAL COUNCIL ON
INTERNATIONAL TRADE DOCUMENTATION
SUITE 1200 350 BROADWAY NEW YORK, NY 10013 TELEPHONE: 212-925-1400
EUGENE A. HEMLEY, EXECUTIVE DIRECTOR CABLE: INTRADOCUM, NEW YORK

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James A. Geraghty
Donovan and Donovan
New York, NY

February 25, 1987

Mr. Joseph K. Dowley
Chief Counsel, Committee on Ways & Means
U. S. House of Representatives
Room 1102, Longworth House Office Building
Washington, DC 20515

Subject: Proposed Conversion of the Tariff Schedule of the United States into the Harmonized Commodity Description and Coding System.

Dear Sir:

The National Council on International Trade Documentation (NCITD) has supported the development of the Harmonized System since its inception as a means of standardizing trade data necessary for the efficient conduct of business between the United States and its trading partners.

NCITD is a privately financed membership organization consisting of about 200 member companies dedicated to simplifying and improving international trade documentation and related practices and procedures. The membership includes manufacturers, exporters, importers, carriers, banks, insurance companies, port authorities and others engaged in international trade.

The adoption of the Harmonized System provides a simple coding system replacing multiple methods of referring to the same commodities. While there will be an initial conversion effort for the trading community, the long term benefits of this simplification will be significant.

Therefore, favorable and timely consideration of this program is recommended. As we currently understand the tentative schedule, a Spring 1987 approval will give prospective users of the system time to complete installation prior to the prospective operational date, January 1, 1988. Any delays could present implementation problems.

We appreciate your invitation to comment on this subject. If you have any questions, please contact us.

Sincerely yours,

Eugene A. Hemley
Executive Director

EAH/pen

STATEMENT OF STANLEY NEHMER, PRESIDENT

ECONOMIC CONSULTING SERVICES, INC.

ON BEHALF OF THE NECKWEAR ASSOCIATION OF AMERICA, INC.

Re Chapters 61 and 62

In its January 12, 1987 press release, the House Ways and Means Subcommittee on Trade requested written comments concerning the proposed conversion of the Tariff Schedules of the United States into the Harmonized Commodity Description and Coding System. In response to this request, I am submitting the following comments on behalf of the Neckwear Association of America, Inc.

This submission concerns the classification of men's and boys' neckties in the Harmonized System. These neckties are covered in Chapters 61 (knit neckties) and 62 (not knit, or woven, neckties).

First, I would like to comment on the rates of duty used for men's and boys' neckties in the third edition (October 1986) of the Harmonized System. These general rates of duty (i.e., Column 1) for neckties are as follows: 8 percent for all knit neckties (of silk, man-made fiber, and "other" materials); 8 percent for silk and "other" woven (or "not knit") neckties; and 26.5¢/kg + 13.5 percent for man-made fiber woven neckties. These rates of duty are the same as the final MTN rates of duty for non-ornamented neckties.

The present distinction in the Tariff Schedules of the United States (TSUSA) between ornamented and non-ornamented neckties, however, has been eliminated in the Harmonized System. Yet the volume of trade in ornamented neckties was not considered when the rates of duty for the Harmonized System were calculated.

We recognize that the volume of trade in ornamented neckties is much smaller than the volume of trade in non-ornamented neckties, but it is growing. In 1981-1983, ornamented necktie imports averaged $160,000 annually; in the first nine months of 1986, ornamented necktie imports had grown to an annual rate of $579,000. We strongly believe that the rates of duty for the Harmonized System should have been calculated based on a trade-weighted average of both types of neckties, rather than by simply using the final MTN rates of duty for non-ornamented neckties.

Accordingly, we have calculated trade-weighted average duties based on imports of ornamented and non-ornamented neckties during the first nine months of 1986. This is the first year where we can calculate such duties since the 1986 TSUSA is the first one to give statistical breakouts for ornamented neckties by type of material.

The result is that in several cases, namely, knit man-made fiber and "other" knit and woven neckties, the duties used in the Harmonized System do not accurately reflect the trade volumes of both ornamented and non-ornamented neckties. In order to be truly reflective of the trade activity of both types of neckties, the calculations show that these duties should be raised to 8.2 percent ad valorem.

The relevant duty items in the Harmonized System that should be increased are as follows: item number 6117.20.00.20 for knit man-made fiber neckties; item number 6117.20.00.30 for "other" knit neckties; and item number 6215.90.00 for "other" woven neckties.

A second issue concerns silk neckties subject to textile agreements. In the TSUSA, neckties of chief value silk but chief weight man-made fibers are dutiable at the duty for silk neckties but are subject to the Multifiber Arrangement (MFA) because they are chief weight man-made fibers.

Recently the Commerce Department has called the attention of the Customs Service to the fact that most imported silk neckties are of chief weight man-made fiber because of the weight of the linings in the neckties. Linings are an essential part of neckties. They give the necktie shape and body. A necktie without a lining is essentially a scarf.

In the third edition of the Harmonized System, the breakdown which currently applies to silk neckties in the TSUSA ("subject to textile agreements" and "other") is missing. We think that the present circumstances under the TSUSA which permit this breakdown continue under the Harmonized System. Being of chief weight man-made fiber, these neckties are subject to the MFA and there should be an appropriate breakout for them in the Harmonized System.

Accordingly, we strongly recommend that:

1. The duties on "man-made fiber knit" and "other" knit and woven neckties be raised from 8 to 8.2 percent ad valorem.

2. The listing for silk neckties should have two sub-breakouts: "subject to textile agreements" and "other".

I would be happy to answer any questions the Subcommittee on Trade might have regarding this submission.

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CHROMATOGRAPHY AND ELECTROPHORESIS INSTRUMENTS ARE PROPERLY CLASSIFIABLE AS FILTERING AND PURIFYING MACHINERY AND APPARATUS

These comments are submitted on behalf of Pharmacia Inc., Piscataway, New Jersey, regarding the third edition of the proposed conversion of the Tariff Schedules of the United States ("TSUS") into the nomenclature structure of the Harmonized Commodity Description and Coding System ("Harmonized System"), which was issued in October 1986.

The purpose of these comments is to demonstrate that the third draft of the Harmonized System contains a basic error in its proposed classification of a type of filtering and purifying apparatus known as chromatography and electrophoresis equipment.

I

CURRENT TARIFF TREATMENT

Chromatography and electrophoresis equipment is presently classifiable under the tariff provision for "filtering and purifying ... apparatus ... for liquids" in item 661.95, TSUS. The rate of duty applicable to this provision for 1987 is 3.9 percent.

The current classification of chromatography and electrophoresis equipment under Tariff Schedules item 661.95 results from recent litigation before the U.S. Court of International Trade.

In Pharmacia Fine Chemicals, Inc. v. United States,[1] the importer challenged the Customs Service's classification of chromatography columns, related chromatography equipment, and fraction collectors under the tariff provision for "instruments or apparatus for physical or chemical analysis" in item 711.88, TSUS.[2]

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1 9 CIT ___, Slip Op. 85-92 (September 4, 1985). A copy of the decision is attached to this submission as Appendix "A".

2 The Government conceded that the classification of some of the columns and adaptors as "valves" under Tariff Schedules item 680.22 was incorrect. Tariff Schedules item 711.88 provides in pertinent part for: "... other instruments or apparatus for physical or chemical analysis ... all the foregoing, and parts thereof: ****** Other".

The U.S. Court of International Trade[3] rejected the Government's classification of the chromatography columns, related equipment, and electrical fraction collectors under Tariff Schedules item 711.88, and specifically determined that chromatography (and, by analogy, electrophoresis) is a method of filtration and purification, and not a method of physical or chemical analysis. Accordingly, the Court held that chromatography columns and related chromatography equipment are properly classifiable under Tariff Schedules item 661.95 as "filtering and purifying ... apparatus ... for liquids."[4] The Court's decision similarly held that chromatography fraction collectors (which are electrically operated) are properly classifiable under the same provision, i.e., as parts of filtering and purifying apparatus.

The decision of the Court of International Trade is consistent with a previous administrative determination made by the Customs Service regarding the tariff classification of chromatography columns. In a ruling letter dated May 22, 1974, the Customs Service ruled that chromatography columns were used "to separate various substances, and not for their analysis."[5] Thus, the columns were determined to be properly classifiable under Tariff Schedules item 661.95. Similarly, ion exchange resins have been held by the Customs Service to be parts of filtering apparatus.[6] This later administrative determination is consistent with the 1971 determination of the (then) Customs Court in Pharmacia Inc. v. United States,[7] where the court described Sephadex, a separation media used in chromatography, as a "molecular sieve which is useful for separating molecules of varying sizes."[8]

The Court's decision is supported by lexicographic sources, which reflect the commercial and scientific use of chromatography apparatus. For example, Collier's Encyclopedia, Vol. 6 at 63 (1979) states that:

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3 This court has exclusive jurisdiction to determine the proper classification of imported merchandise under the tariff laws of the U.S. See 28 U.S.C. §1581(a); H. Rep. No. 96-1235, 96th Cong., 2d Sess. at 21 (1980) reprinted in 4 U.S. Code Cong. & Admin. News 3732 (1980).

4 The full text of the provision is set forth in Appendix "B" to this submission.

5 Headquarters Ruling Letter CLA-2:R:CV:MA-RG 434, 031277. This ruling letter was subsequently withdrawn because of the pendency of a [prior] court case involving the same issue.

6 See Customs Service letter dated May 10, 1965, and abstracted in T.D. 56478(108) (100 Treas. Dec. 507). Accord, Pharmacia Fine Chemicals, Inc. v. United States, supra, Slip Op. 85-92 at 5, n. 9.

7 66 Cust. Ct. 202, C.D. 4190 (1971).

8 Id. at 204.

> Chromatography ... is a technique for separation of mixtures during their passage over columns or sheets of adsorbent material ... which retard the passage of the individual components to different degrees.

In other words, the actual commercial application of chromatography and electrophoresis apparatus is for filtering and purification, and not for analysis of any kind.

II

THE HARMONIZED SYSTEM

A. Purpose Of The Harmonized System.

The Harmonized System is a tariff classification system intended to replace the current Tariff Schedules of the United States. The Harmonized System has been developed after extensive negotiations with our international trading partners under the auspices of the Brussels-based Customs Cooperation Council. The purpose of adopting the Harmonized System is to create a single, world-wide product nomenclature system for use in the classification, description, and coding of goods under customs laws, the collection of statistical data on imports and exports, and the documentation of transactions in international trade.[9]

In requesting the U.S. International Trade Commission to prepare the draft conversion of the Tariff Schedules into the Harmonized System, the President indicated that the work should be performed in accordance with specific guidelines. In particular, the President directed that "the Commission should avoid, to the extent practicable and consonant with sound nomenclature principles, changes in the rate of duty on individual products."[10] In other words, the Harmonized System, though being a new nomenclature system, is not intended to change the rates of duty properly applicable to imported merchandise under existing law.[11]

B. The Proposed Classification Of Chromatography And Electrophoresis Apparatus Is Inconsistent With Current Law.

The third draft of the proposed conversion of the Tariff Schedules into the Harmonized System proposes to classify chromatography and electrophoresis instruments under Heading 9027, which provides as follows:

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9 See, e.g., 49 Fed. Reg. 35274 (September 6, 1984).

10 46 Fed. Reg. 47897 (September 30, 1981) (emphasis added).

11 See generally id. at 47897-98.

Heading	Stat. Suffix	Article Description	Rate Of Duty
9027		Instruments and apparatus for physical or chemical analysis ... parts and accessories thereof:	
		* * * * *	
9027.20		Chromatographs and electrophoresis instruments:	
9027.20.40		Electrical.....	4.9%
	40	Electrophoresis instruments	
	50	Gas chromatographs	
	60	Liquid chromatographs	
	80	Other	
9027.20.80		Other.....	6.2%
	30	Gas chromatographs	
	60	Liquid chromatographs	
	90	Other	

Thus, the proposed conversion erroneously provides for chromatography and electrophoresis instruments as instruments or apparatus for physical or chemical analysis. This tariff treatment is in direct conflict with the proper classification of these instruments as filtering and purifying apparatus.

Moreover, the third draft of the Harmonized System would undermine the expressly-stated objective of changing the nomenclature of the classification system without changing the duty rate applicable to imported merchandise. That such a result would occur is manifest from the duty rates assigned to these provisions. Present Tariff Schedules item 661.95 has a 1987 duty rate of 3.9 percent, but under the proposed conversion, merchandise classifiable in Heading 9027.20.40 or 9027.20.80 is dutiable at the rate of 4.9 percent or 6.2 percent respectively. In fact, the rate of 6.2 percent applicable to non-electric apparatus corresponds to present Tariff Schedules item 711.88, which is the very classification the Court of International Trade held to be incorrect.

To a large degree, the Harmonized System adopts the classification method found in the Brussels Nomenclature currently used by many of our international trading partners. Significantly, in support of its ruling in the Pharmacia Fine Chemicals case that the chromatography columns and fraction collectors were properly classifiable in Tariff Schedules item 661.95, TSUS, instead of Tariff Schedules item 711.88, the Court of International Trade pointed out that the language of Heading 84.18 of the Brussels Tariff Nomenclature is almost identical to the language of item 661.95 of the Tariff Schedules. The Court of International Trade therefore relied upon the language contained in Heading 84.18 of the Explanatory Notes to the Brussels Nomenclature for its conclusion that the chromatography apparatus was not classifiable as instruments for physical or chemical analysis:

> ... the Explanatory Notes suggest that the merchandise is within the provisions of Heading 84.18 -- and therefore that Congress

> intended that [the merchandise] be classifiable under item 661.95, TSUS -- and not within Heading 90.25, which corresponds to item 711.88, TSUS.[12]

In derogation of the Explanatory Notes to the Brussels Nomenclature, the Customs Cooperation Counsel has provided for chromatographic and electrophoresis equipment in Chapter 90, Heading 90.27 of the Harmonized Commodity Description and Coding System, under the superior heading for analytical equipment. This provision appears to be based on the mistaken assumption that chromatography and electrophoresis equipment is analytical, whereas in fact, it merely separates the components of mixtures by a process of purification.

The Explanatory Notes originally issued on June 29, 1982 by the Customs Cooperation Council regarding the scope of the provisions of the Harmonized Code provided that Heading 90.27 encompassed, inter alia,

> (19) Instruments used in electrophoretic analysis.
>
> * * *
>
> These instruments usually incorporate a photometric device consisting of a selenium cell and a milliammeter graduated directly in units of optical density. They are used for analysing various solutions (proteins, amino-acids, etc.), for examining substances such as plasma, hormones, enzymes, viruses, etc., and for studying polymerisation phenomena. [Emphasis supplied.]

This language impliedly recognized that the electrophoretic apparatus itself was not analytical, but that subsequent to the separation of materials by electrophoresis, analytical instruments may be used to determine the nature or quantity of the separated or purified materials. Only these latter instruments and apparatus are embraced by the Heading, not the electrophoresis apparatus itself.

Chromatography equipment was clearly and unambiguously provided for in Heading 84.21, as recognized by the U.S. Court of International Trade in its analysis of the Brussels Nomenclature and the Explanatory Notes to the Brussels Nomenclature which were the provisions precedent to the Heading and Notes of the Harmonized Code.

Notwithstanding the 1982 Explanatory Notes, the "Conversion" promulgated a conceptual error regarding the nature of chromatographic and electrophoretic equipment. Like the former practice of the U.S. Customs Service, it considered these products to be "apparatus for analysis." The Court of

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12 Slip Op. 85-92 at 6. Tariff Schedules Item 711.88 covers instruments or apparatus for physical or chemcial analysis.

International Trade found the U.S. Customs Service practice to be wrong for the simple reason that chromatography apparatus does not perform analysis, it merely purifies materials which thereafter may be analysed, or used, or sold. Similarly it would be erroneous to provide for this apparatus in the Harmonized Code under a Heading for analytical equipment.

When the third draft of the Conversion was released late in 1986, together with the 1986 Explanatory Notes, it was realized that the conceptual error which had caused the U.S. Customs Service to misclassify chromatography equipment had permeated the Harmonized Code. Thus, the 1986 Explanatory Notes for Heading 90.27, in erroneously characterizing chromatography equipment as analytical, state:

> **Chromatographs** (such as gas-, liquid-, ion- or thin-layer chromatographs) for the determination of gas or liquid components. The gas or liquid to be analysed is passed through columns or thin layers of absorbent material and then measured by means of a detector. The characteristics of the gases or liquids under analysis are indicated by the time taken for them to pass through the columns or thin layers of absorbent material, while the quantity of the different components to be analysed is indicated by the strength of the output signal from the detector.

A review of this language shows where, and how, the error arises. First, it starts off with the premise that the apparatus is used for the determination of gas or liquid components. It then describes the chromatography apparatus and how it is used. Finally, it describes an analytical instrument used subsequent to the purification or separation, i.e. the "detector" (probably a spectrophotometer or chemical analyzer). The error consists in classifying the separative equipment under the same provision as the analytical equipment used after the purification.

Chromatography (and electrophoresis) are recognized in the marketplace, the laboratory and the plant as separative methods of purifying materials. Chromatographic installations are "preparatory", i.e., used to make purified materials for the laboratory or for commerce. Even if the apparatus is used only to purify materials which will be analysed, the analysis itself will be by means of a different device -- an analytical instrument such as a densitometer, a spectrophotometer, or a chemical analyzer. However, in no case does the chromatography or electrophoresis equipment itself perform any analysis.

In the Pharmacia Fine Chemicals case, the Court took special note of the testimony that chromatographic columns are not used for analysis:

> ... [P]laintiff's expert ... testified that 99.5% of the use of the articles is for purification and separation of material ... [P]laintiff's other expert ... testified that ... 90% of the use of the merchandise was "in the preparation process where ... the whole

> objective of running material through the columns is to ultimately get something pure in your hands." ... [D]efendant's expert ... conceded that [the] study ... [of Plaintiff's expert] reflected actual use of the merchandise....[14]

This testimony persuaded the Court of International Trade to reject the Government's contention that an "instrument or apparatus which separates a material into component parts performs 'chemical analysis' ... [and] is provided for under item 711.88, TSUS," and to rule that merchandise "which merely separates materials to obtain a purified substance is not within the commercial meaning of 'apparatus for chemical analysis.'"[15]

The description of electrophoresis instruments in Heading 90.27 is also erroneous. The statement in the Explanatory Notes that these instruments are "used for analysing ..." is plainly wrong. Electrophoresis is a form of separation and purification closely related to chromatography, and any analysis of the separated material must be performed subsequently using different instruments. Thus, the photometric device which is referred to in the Explanatory Notes is used after the separation has occurred and is not part of the electrophoresis apparatus.

III

THE PROPER CLASSIFICATION OF CHROMATOGRAPHY AND ELECTROPHORESIS INSTRUMENTS UNDER THE TARIFF SCHEDULES CONVERSION IS UNDER HEADING 8421 OF THE HARMONIZED SYSTEM.

Under the proposed conversion, Tariff Schedules item 661.95 has been converted to Heading 8421. Specifically, Heading 8421.29.00 provides for:

Heading	Stat. Suffix	Article Description	Rate Of Duty
8421		Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof:	
		* * * * *	
		Filtering or purifying machinery and apparatus for liquids:	
8421.21.00	00	For filtering or purifying water..	3.9%
8421.22.00	00	For filtering or purifying beverages other than water.....	3.9%
		* * * * *	
8421.29.00		Other.....	3.9%

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14 Slip Op. 85-92, at 4, n. 5.

15 Id., at 6-7 (footnote omitted).

The foregoing statutory language, as well as the applicable rates of duty, unequivocally establishes that Heading 8421 provides for merchandise presently classifiable in Tariff Schedules item 661.95.

IV

CONCLUSION

In order to lend logic and factual accuracy to the conversion, chromatography and electrophoresis instruments must be provided for in Heading 8421. The language of Heading 9027 does not encompass the chromatographs and electrophoresis instruments. Accordingly, the provisions for chromatography and electrophoresis instruments which now appear in Heading 9027.20.40 through 9027.20.8090 should be deleted and new provision for these instruments should be inserted in the appropriate place under Heading 8421. This will correct the confusion engendered by the Explanatory Notes (which should be annotated) and will foster ease of administration.

At the very least, the mandate not to change duty rates may be met if the rates of duty proposed for Heading 9027.20.40 and 9027.20.80 are changed to 3.9 percent. This alternative approach would thus maintain the rate of duty currently applicable for Tariff Schedules item 661.95 which was judicially determined to be the proper tariff classification for chromatography equipment.

In conclusion, we urge the revision of the third draft of the Harmonized System to accomplish the stated purpose of the conversion, and carry out the congressional intent that chromatography instruments be classified as filtering and purifying machinery and apparatus, in accord with the judicial determination and legal precedent set by the U.S. Court of International Trade in Pharmacia Fine Chemicals Inc. v. United States, Slip Op. 85-92.

Respectfully submitted,

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Appendix A

SLIP OP. 85-92

UNITED STATES COURT OF INTERNATIONAL TRADE

PHARMACIA FINE CHEMICALS, INC.,	:	
Plaintiffs,	:	
v.	:	BEFORE: DiCARLO, JUDGE
UNITED STATES,	:	Court No. 77-7-01188
Defendant.	:	

Memorandum Opinion and Order

Articles chiefly used for filtering and purifying liquids to obtain pure materials are not specifically described under item 711.88, TSUS, as "apparatus for physical or chemical analysis" and are classifiable under item 661.95, TSUS, as "filtering and purifying . . . apparatus . . . for liquids" .

[Judgment for plaintiff.]

Decided: September 4, 1985

Freeman, Wasserman & Schneider (Louis Schneider, Angela P. Violin and Patrick C. Reed) for the plaintiff.
Richard K. Willard, Acting Assistant Attorney General; Joseph I. Liebman, Attorney in Charge, International Trade Field Office (Jerry P. Wiskin) for the defendant.

DiCARLO, Judge: Plaintiff challenges the United States Customs Service's (Customs) classification of articles invoiced as "columns", "adaptors", "reservoirs", "tubing connectors", and "fraction collectors" imported from Sweden.

Customs classified the merchandise under item 711.88, Tariff Schedules of the United States (TSUS), as "instruments or

apparatus for physical or chemical analysis" at a rate of duty of 11 percent ad valorem.[1]

Plaintiff claims all the merchandise is properly classifiable as "filtering and purifying . . . apparatus . . . for liquids" under item 661.95, TSUS, at a rate of duty of 5.5 percent ad valorem.[2]

Since an item is not classifiable under item 661.95, TSUS, if it is specifically provided for elsewhere,[3] the question before the Court is whether the merchandise is specifically provided for by item 711.88, TSUS, or another provision of the tariff schedules.

The Court holds that the merchandise is not specifically described by item 711.88, TSUS, and is classifiable under item

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[1] Some of the columns and adaptors were classified under item 680.22 TSUS, as "valves", at a rate of duty of 11 percent ad valorem. Defendant concedes that this classification was incorrect, and now claims that all the merchandise is classifiable under item 711.88 TSUS, or, alternatively, under item 774.60, TSUS, as "Articles not specially provided for, of rubber or plastics: . . . Other" at a rate of duty of 8.5% ad valorem.

[2] Alternatively, plaintiff claims that the fraction collectors are properly classifiable under item 688.40, TSUS, as an "electrical article not specially provided for" at a rate of duty of 5.5 percent ad valorem, and that the other merchandise is properly classifiable under item 774.60, TSUS.

[3] Headnote 1(v), Part 4, Schedule 6, TSUS, provides that:

1. This part does not cover---

. . . .

(v) articles and parts of articles specifically provided for elsewhere in the schedules.

661.95, TSUS, as "filtering and purifying . . . apparatus . . . for liquids."

In interpreting a provision in the tariff schedules, "a designation by use may be established, although the word "use" or "used" does not appear in the language of the statute. E.C. Lineiro v. United States, 37 CCPA 10, 14, C.A.D. 411 (1949). See United States v. Hillier's Son Co., 14 Cust. Ct. App. 216, 222 (1926) (use test applied to provision for "medicinal preparations"); D. Serko, Import Practice: Customs and International Trade Law 51-52 (1985).

Both item 661.95, TSUS, and item 711.88, TSUS, are use provisions. See Noss Co. v. United States, 7 CIT ___, ___, 588 F. Supp. 1408, 1412 (1984), aff'd 753 F.2d 1052 (Fed. Cir. 1985) (instrument used for purification classifiable under item 661.95, TSUS).

The parties stipulate that the articles are chiefly used for filtering or purifying liquids,[4] and the Court finds that the

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[4] Pretrial Order, Schedule C, ¶8. The parties also agree that all the merchandise except the fraction collectors are in chief value of plastics. Id.

The columns, which are imported in models differing mainly in diameter and length, are plastic tubes, fitted with supports to contain a chromatographic media, that separate liquid mixtures passed through them. Adaptors are inserted in the top part of the columns so that the entering liquids are distributed evenly on the surface of the media inside the columns. Reservoirs contain the mixtures which run through the columns for separation; tubing connectors connect the columns and reservoirs; fraction collectors collect the separated liquids.

articles are so used.[5]

Persuasive indication that Congress considered the merchandise provided for in item 661.95, TSUS may be found in the Brussels Nomenclature.[6] Heading 84.18 of the Brussels

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[5] At trial, plaintiff's expert, Dr. Leslie C. Beadling, testified that 99.5% of the use of articles is for purification and separation of materials. Dr. Fred E. Regnier, plaintiff's other expert, testified that a review by computer of scientific literature indicated that 90% of the use of the merchandise was "in the preparation process where . . . the whole objective of running material through the columns is to ultimately get something pure in your hands." Transcript, at 130. Mr. Walter A. Svec, defendant's expert, conceded that Dr. Regnier's study reflected actual use of the merchandise. A regional sales manager for plaintiff, Ronald Goldberg, testified that his customers use the columns to accumulate purified materials for further use.

[6] Customs Co-Operation Council, Nomenclature for the Classification of Goods in Customs Tariffs (1955) (Brussels Nomenclature), and Nomenclature-Explanatory Notes (2d ed. 1966) (Explanatory Notes). The Brussels Nomenclature

> was put forth by the Customs Cooperation Council, an international organization, for adoption by its member nations, with the idea that their tariff items might be made uniform in phraseology, even if the rates were different and this phraseology, becoming familiar, would help trade by reducing the uncertainty of exporters as to how their exports would fare with the customs of trading partners.

F.L. Smidth & Co. v. United States, 409 F.2d 1369, 1375 (C.C.P.A. 1969). See Jarvis Clark Co. v. United States, 733 F.2d 873, 875 n.2 reh'g denied, 739 F.2d 628 (Fed. Cir. 1984).

The Brussels Nomenclature influenced the U.S. Tariff Commission during the drafting of the Tariff Schedules, see Tariff Classification Study Submitting Report 8 (1960), and "courts and Congress recognize that the [Brussels Nomenclature] is a highly probative source for ascertaining legislative intent, especially where the languages of the TSUS and Brussels are similar." Toyota Motor Sales, U.S.A., Inc. v. United States, 7 CIT ___, ___, 585 F. Supp. 649, 655 (1984), aff'd, 753 F.2d 1061 (Fed. Cir. 1985); see, e.g., Karoware, Inc. v. United States, 65 CCPA 1, 6, C.A.D. 1197, 564 F.2d 77, 82 (1977).

Nomenclature[7] is virtually identical to item 661.95, TSUS, while Heading 90.25[8] differs from item 711.88, TSUS, only in the order of the words. Articles covered by Heading 84.18 include:

> filters and purifiers of all types (. . . chemical . . . etc.) . . .
>
> The liquid filters of this group separate solid, fatty colloidal, etc., particles from a liquid, for example, by passing it through a sheet, membrane or mass or porous material . . .
>
> It includes, inter alia:
>
> (1) Domestic type water filters . . .
>
> . . . .
>
> (8) Chemical water purifiers, e.g., permutite or zeolite softeners and lime water purifiers.[9]

By contrast, all the instruments and apparatus described in the Explanatory Notes as covered by Heading 90.25 do more than separate materials. See 4 Explanatory Notes, supra, 1613-1619.

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[7] Heading 84.18 of the Brussels Nomenclature provides for

> centrifuges; filtering and purifying machinery and apparatus (other than filter funnels, milk strainers and the like), for liquids or gases.

[8] Heading 90.25 of the Brussels Nomenclature includes:

> Instruments and apparatus for physical or chemical analysis (such as polarimeters, refractometers, spectometers, gas analysis apparatus) . . .

[9] 3 Customs Co-operation Council, Explanatory Notes to the Brussels Nomenclature 1213-1215 (2d ed. 1966) (Explanatory Notes). Permutit and zeolite are both ion-exchange media. The Condensed Chemical Dictionary, 597, 841, 1186 (Rose 5th ed. 1956) The evidence established that ion-exchange media is one of the chromatographic media used with the merchandise.

Thus, the Explanatory Notes, suggest that the merchandise is within the provisions of Heading 84.18 -- and therefore that Congress intended that it be classifiable under item 661.95, TSUS -- and not within Heading 90.25, which corresponds to item 711.88, TSUS.

Defendant claims, citing lexicographic sources, that an instrument or apparatus which separates a material into component parts performs "chemical analysis" and is specifically provided for under item 711.88, TSUS. The Court finds that the merchandise which merely separates materials to obtain a purified substance is not within the commercial meaning of "apparatus for chemical

analysis".[10] This view is consistent with the Congressional intent, as evidenced by the Brussels Nomenclature discussed supra, and previous judicial interpretations of item 711.88, TSUS.

In Burrows Equipment Co. v. United States, 62 Cust. Ct. 681, C.D. 3848, 300 F.Supp. 455 (1969), the Court held that instruments which determined the germinating capacity of seeds were classifiable under item 711.88, TSUS. The Court held that for purposes of item 711.88, TSUS, an instrument or apparatus is

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[10] Defendant's expert witness, Walter A. Svec, characterized the merchandise as an analytical instrument or apparatus by defining the term "analysis" to mean "separation" of a chemical into component parts. See Transcript at 146-47:

Q. (Atty. for defendant): I would like to read to you the following definition which appears in the Funk and Wagnalls New Standard Dictionary of the English Language. "Analysis, 1. the resolution of a compound into its parts or elements; the act of ascertaining, separating, or unfolding in order, the elements of a complex body, substance, or treatise. Chemical analysis is either (1) qualitative or (2) quantitative. Physical analysis is the resolution of any physical object or substance into its parts. Qualitative a., the process in chemistry of finding out how many and what elements are present--quantitative a., the process of finding the bulk or amount of each element present."

Do you agree with that definition?

A. (Mr. Svec) Yes.

Q. Does that definition . . . apply to chromatographic liquid--liquid column chromatography?

A. Yes, That's the reason I consider it an analytical method.

The Court finds more persuasive the testimony of Dr. Leslie C. Beadling and Dr. Fred E. Regnier, plaintiff's experts, who testified that the merchandise does not perform chemical or physical analysis, as they understand those terms. Ronald Goldberg, a sales manager, testified that his customers did not use the columns for analytical purposes.

included within the common meaning of the term "chemical analysis",

> if it determines one or more ingredients of a substance either as to kind or amount; or if it performs a detailed examination of a complex chemical substance for the purpose of enabling one to understand its nature or to determine an essential feature; or if it determines what elements are present in a chemical substance.

62 Cust. Ct. at 685, 300 F.Supp. at 458; accord John H. Faunce, Inc. v. United States, 64 Cust. Ct. 491, 494, C.D. 4024 (1970).

The articles held classifiable under item 711.88, TSUS, were chiefly used to perform or facilitate physical or chemical determination of the quantity, qualities, or composition of a substance. The parties have stipulated that the articles in this action are chiefly used for filtering or purifying liquids. The Court has found that the purpose of the filtering or purifying is to obtain a pure material that may be used, sold, or studied.

Defendant's contention that the merchandise is specifically described under item 711.88, TSUS, is based primarily on E.M. Laboratories, Inc. v. United States, 80 Cust. Ct. 125, C.D. 4744 (1978), where the Court found thin layer chromatography plates (TLC plates) properly classified under item 711.88, TSUS. Defendant argues that the articles in this action function in the

same manner as TLC plates.[11]

But the Court in that case found that the purpose of the TLC plates was to separate materials for analysis. By contrast, the merchandise in this action prepares materials for a variety of uses requiring purified substances. Also, the issue before the Court in E.M. Laboratories was whether the plates were classifiable under item 711.88, TSUS, or under item 547.55, TSUS, as labcratory glassware. The Court could not consider whether the TLC plates were classifiable under item 661.95, TSUS, as "filtering or purification" devices.[12]

Defendant also relies on John H. Faunce, Inc. v. United States, supra. The merchandise in Faunce was an optical diffractometer[13] which allows a visual comparison of the atomic structure of a crystal, to reveal its physical and chemical properties. Rejecting plaintiff's claim that the apparatus did not perform "analysis", the Court in Faunce held that:

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[11] The TLC plates at issue in E.M. Laboratories consisted of sheets of glass to which a silica gel adsorbent layer was permanently affixed. A substance is applied on the adsorbent layer, and separated into components when the plate is placed in a vessel containing a solvent which rises through the adsorbent layer. The plates are then subjected to dyes, other solutions, or light rays, "thereby permitting an identification of the separated substances and their component elements." 80 Cust. Ct. at 127 (footnote omitted).

[12] No claim could have been made that the plates were properly classifiable under item 661.95, TSUS, since Headnote 1(iv) of Schedule 6, Part 4 prohibits classification of articles of glass in that part.

[13] A diffractometer is an apparatus consisting of a lamp, prism, three lenses, light filter, mirror and a black card punched with holes.

> a detailed examination takes place which enables the scientist to understand [a crystal's] essential features and to obtain much valuable information concerning other physical and chemical properties. . .

64 Cust. Ct. at 495. The Court noted that plaintiff's expert witness testified that the diffractometer "in conjunction with the human factor, performed an analysis" and that the "trade literature describes the apparatus as one 'for crystal structure analysis and other research application.'" 64 Cust. Ct. at 495 n.3 (emphasis in original).

Unlike a diffractometer, the merchandise in this action provides no information regarding the chemical or physical properties of a substance. The user obtains a purified substance.

Finally, defendant argues that the Summary of Trade and Tariff Information, USITC Public. No. 841, Control No. 7-2-30 (1983), indicates a Congressional intent that the imported merchandise is classified in item 711.88, TSUS. Item 711.86, TSUS, is essentially unchanged since enactment in 1962.[14] Summaries published after the enactment of the tariff item under consideration are "poor indications of Congressional intent." Daw Industries, Inc. v. United States, 714 F.2d 1140, 1142 (Fed. Cir.

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[14] Defendant also argues that the articles comprise "parts" of instruments or apparatus for physical or chemical analysis item 711.88, TSUS. Defendant argues that "whether the columns themselves perform chemical or physical analysis is of no moment." Brief for the United States, Defendant, at 13.

But the applicability of a tariff provision for "parts" is controlled by chief use, E.R. Hawthorne & Co. v. United States, 730 F.2d 1490, 1491 (Fed. Cir. 1984), and the stipulated chief use of the articles is for filtering and purifying liquids.

1983). "They are not part of the legislative history of a prior act nor are they the interpretation of the agency empowered to apply the act and therefore have little, if any, weight in determining the meaning of prior statutory language." Volkswagen of America, Inc. v. United States, 68 Cust. Ct. 122, 129, C.D. 4348, 340 F.Supp. 983, 989 (1972), aff'd per curiam, 61 CCPA 41, C.A.D. 1115, 494 F.2d 703 (1974).

To summarize, the Court finds that the merchandise is chiefly used for filtering and purifying liquids to obtain pure materials for industrial or commercial use. The Court holds that plaintiff has overcome the presumption of correctness that attaches to Customs' classification:[15] the merchandise is not specifically classified under item 711.88, TSUS, as "instruments or apparatus for physical or chemical analysis"; the Brussels Nomenclature persuasively indicates that Congress intended that merchandise chiefly used for filtering or purifying liquid is classifiable under item 661.95, TSUS.

Judgment will be entered accordingly. So ordered.

Dated: New York, New York
September 4, 1985

DOMINICK L. DiCARLO
Judge

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[15] This presumption does not apply to the columns and adaptors classified under item 680.22, TSUS, since defendant has abandoned that claim. See United States v. Macnus, Mabee & Reynard, Inc., 39 CCPA 1, 7, C.A.D. 455 (1951).

Appendix B

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1983)

SCHEDULE 6. - METALS AND METAL PRODUCTS
Part 4. - Machinery and Mechanical Equipment

Item	Stat. Suf-fix	Articles	Units of Quantity	Rates of Duty		
				1	Special	2
		Centrifuges; filtering and purifying machinery and apparatus (other than filter funnels, milk strainers, and similar articles), for liquids or gases; all the foregoing and parts thereof (con.):				
		Other:				
661.92	00	Cast-iron (except malleable cast-iron) parts, not alloyed and not advanced beyond cleaning, and machined only for the removal of flow, gates, sprues, and risers or to permit location in finishing machinery	Lb	Free		10% ad val.
661.93	00	If Canadian article and original motor-vehicle equipment (see headnote 3, part 6B, schedule 6)	Lb	Free		
661.94	00	Portable air purifiers, not specially designed for industrial use, and filters therefor	L	3.9% ad val.	Free (A*,E,I)	25% ad val.
661.95		Other		3.9% ad val.	Free (A,E,I)	25% ad val.
	20	Low-wattage resistor	Lb			
	80	Other	X			
661.96	00	If Canadian article and original motor-vehicle equipment (see headnote 3, part 6B, schedule 6)	L	Free		
661.97	00	Filtering and purifying machinery and apparatus, if certified for use in civil aircraft (see headnote 3, part 6C, schedule 6)	L	Free		25% ad val.
		Machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing, capsuling, or labelling bottles, cans, boxes, bags, or other containers; other packing or wrapping machinery; machinery for aerating beverages; dish washing machines; all the foregoing and parts thereof:				
662.10		Machines for packaging pipe tobacco; machines for wrapping candy; machines for wrapping cigarette packages; and combination candy cutting and wrapping machines; all the foregoing and parts thereof		3.4% ad val.	Free (A,E,I)	25% ad val.
	20	Machines for wrapping candy	No			
	40	Other machines	No			
	60	Parts of the foregoing	X			
662.15	00	Can-sealing machines, and parts thereof	L	4.2% ad val.	Free (A,E,I)	30% ad val.
662.18	00	Other: Cast-iron (except malleable cast-iron) parts, not alloyed and not advanced beyond cleaning, and machined only for the removal of flow, gates, sprues, and risers, or to permit location in finishing machinery	L	1.2% ad val.	Free (A,E,I)	10% ad val.
662.20		Other		2.8% ad val.	Free (A,E,I)	25% ad val.
		Strapping machines and parts thereof:				
	30	Machines	No			
	33	Parts	X			
		Other wrapping and packaging machines and parts thereof:				
	43	Machines	No			
	50	Parts	X			
	63	Other	X			

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February 24, 1987

Mr. Joseph K. Dowley, Chief Counsel
Committee on Ways and Means
U.S. House of Representatives
Room 1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Dowley:

Comments on behalf of PPG Industries, Inc. re Chapter 70, Section XIII of the October 1986 Proposed Conversion of the Tariff Schedules of the U.S. into the Harmonized Commodity Description and Coding System.

In accordance with the Subcommittee on Trade's Press Release of January 12, 1987, these written comments are submitted by the undersigned as special trade counsel on behalf of PPG Industries, Inc. concerning the third edition of the proposed conversion of the Tariff Schedules of the United States (TSUS) into the nomenclature structure of the Harmonized Commodity Description and Coding System (Harmonized System), issued in October 1986.

I. The third edition of the proposed conversion (October 1986) would effect a significant reduction in the existing (1987) MFN duty rate applicable to certain imports of flat glass and fiber glass products. Such reductions doubtless are unintended. They are contrary to the guidelines specified for the conversion by the President, which require that the conversion avoid changes in the level of protection presently afforded domestic industries by the TSUS. PPG submitted views in opposition to such reductions to the U.S. Trade Representative on November 1, 1984. An item by item comparison of the proposed Harmonized Schedule classification provisions and duty rates with the existing MFN duty rates for the related TSUS classification provisions is presented in Table I, Appendix. Following is a summary which identifies just the proposed headings of the Harmonized Schedules with the related TSUS Item classifications wherein such unintended reduction in the existing MFN duty rate would result. PPG has again called these matters to the attention of the U.S. Trade Representative in a written submission on January 15, 1987, substantially in conformance with these written comments.

PPG specifically requests the Committee on Ways and Means to withhold its approval of the proposed conversion of the TSUS into the Harmonized System until PPG's substantive objections as presented herein, and previously submitted to the USTR are constructively addressed. Alternatively, PPG requests that any enabling legislation which the Committee may be constrained to report include a section specifically amending the flat glass and fiber glass provisions of the proposed conversion to the views thereon expressed herein.

Table 1 - Duty rate reductions in the proposed Harmonized Schedules on flat glass and fiber glass classifications.

Heading	Article Description	MFN Rate & & pref. status*	TSUS Item(s)	Ad val. equiv. of MFN rate*	'85 Import vol. & val. units & FAS
7004.10.20	Colored sheet glass, in rectangular shape..	2.8% A, E	542.5700; 542.6700; 542.7100; 542.7300; 542.7500; 542.7700; 542.9200; 542.9400; 542.9600; 542.9800	))3.3% A,E))))))))	10,121,759 lb $4,896,672

*MEMBER CALIFORNIA AND D.C. BARS; **MEMBER MINNESOTA BAR, NOT ADMITTED IN D.C.;
***MEMBER MARYLAND AND D.C. BARS; †MEMBER MASSACHUSETTS AND NEW YORK BARS,
NOT ADMITTED IN D.C.; ††MEMBER MARYLAND BAR, NOT ADMITTED IN D.C.; †††MEMBER CHARLEROI, BELGIUM, NOT ADMITTED IN D.C.

Table 1 (Continued) - Duty rate reductions in the proposed Harmonized Schedules on flat glass and fiber glass classifications.

Heading	Article Description	MFN Rate & & pref. status*	TSUS Item(s)	Ad val. equiv. of MFN rate*	'85 Import vol. & val. units & FAS
	Other sheet glass, in rectangular shape:		Ordinary sheet glass:		
	Measuring not over 1.5 mm in thickness:		Ov 4 but not ov12 oz/sqft		
7004.90.05	Measuring not over 2.6 m^2 in area.....	0.8%, E	542.1100	1.2%, E	5,456,231 lb $3,204,241
	Meas ov 1.5 but not ov 2 mm in thickness:				
7004.90.15	Meas not ov 0.26 m^2 in area.....	2.8%, E	542.1300	2.9%, E	10,309,995 lb $3,211,092
	Meas ov 2 but not ov 3.5 mm in thickness:		Ov 12 but not ov 16 oz/sqft		
7004.90.2510	Meas not ov 0.26 m^2 in area.....	3.2%, E	542.2100	3.9%, E	5,829,677 lb $1,502,286
7004.90.2520	Meas ov 0.26 but not ov 0.58 m^2 in area..	3.2%, E	542.2300	5.5%, E	2,997,319 lb $602,394
7004.90.2550	Meas ov 0.58 m^2 area	3.2%, E	542.2500	6.5%, E	1,392,568 lb $257,798
7004.90.3010	Meas ov 3.5 but not ov 5 mm in thickness.....	0.5%, E	542.3120; 542.3140; 542.3170; 542.3320; 542.3340; 542.3370; 542.3520; 542.3540; 542.3570; 542.3720; 542.3740; 542.3770.	3.1% A E	31,962,079 lb $4,262,257
7004.90.3020	Meas ov 5 mm thick....	0.5%, E	542.4220; E 542.4250; E 542.4420; E 542.4450; E 542.4620; E 542.4650; E 542.4815; E 532.4835. E	0.9%	4,267,399 lb $2,689,058
7004.90.3050	Meas ov 0.26 m^2 area	0.5%, E	Included in above TSUSAs		
	Float glass, unworked:		Float glass:		
	Colored:		Colored:		
7005.21.10	Meas less than 10 mm in thickness.....	16.1¢/m^2 E	543.6100	17.4¢/m^2 E	2,703,298 m^2 $10,308,567
7005.21.1000	Meas less than 5 mm in thickness.....		543.6300; 543.6700.		
7005.21.1030	Meas 5 mm or more but less than 10 mm thick.				

*--square feet unless otherwise indicated.

Table 1 - (Continued) Duty rate reductions in the proposed Harmonized Schedules on flat glass and fiber glass classifications.

Heading	Article Description	MFN Rate & & pref. status*	TSUS Item(s)	Ad val. equiv. of MFN rate*	'85 Import vol. & val. units & FAS
	Other than colored:		Not colored:		
	Heas less than 10 mm in thickness:				
7005.29.05	Heas not ov 0.65 m^2 in area.....	20.8¢/m^2 E	543.2100; 543.2300.	)20.9¢/m^2 E	984,636 m^2 $2,437,803
7009.10	Rear-view mirrors for vehicles.....	6.8% A, E	544.5100	7.8% A, E	57,045,528 units $52,064,500 (Pt)
	Glass fibers...and articles thereof:				
	Slivers, rovings, yarn and chopped strands:				
			Yarns of glass:		
7009.10.10	Yarns.....	7.4%	309.9800; 309.9900.	)12.5%	5,322,320 lb $8,807,898
7019.32	Thin sheets (voiles)	6.2% A, E	367.5900	6.9%	
Total value of imports in the above categories:					$99,160,204

Source: Table I, Appendix.

The data in the above table show that 14 Harmonized Schedule Headings in the flat glass and glass fiber portion of Chapter 70 would effect reductions below the existing (1987) MFN duty rates for the corresponding TSUS items encompassed therein. In addition, one glass fiber classification is shown as designated for GSP and Caribbean Basin duty-free treatment where corresponding treatment is not currently provided.

PPG requests that the Committee require the USTR to correct the third draft conversion so as to conform the duty rates underscored in the above table to those shown for the corresponding TSUS Items, which are the prevailing (1987) MFN rates. PPG also requests that the GSP and Caribbean Basin treatment shown for fiber glass heading 7019.32 be deleted inasmuch as the described merchandise is not entitled to such treatment at the present time. Alternatively, PPG requests that the Committee provide in any authorizing legislation that the duty rates which would apply to proposed Harmonized Conversion items described above be corrected as indicated in the above table.

II. The third edition of the proposed conversion (October 1986) displays rates for U.S. imports of certain flat glass and fiber glass commodities which are lower than some or each of the rates proposed by Canada, the EC, or Japan for the certain tariff heading. PPG objects to preferential treatment for imports from those countries as compared with the rates applicable to U.S. exports to such countries. The detail is presented in the following table.

Table 2

Comparison of U.S., Canadian, EEC, and Japanese MFN duty rates in the proposed Harmonized Schedules of those countries. (Underscored duties of other countries exceed U.S. duties for the like Harmonized Schedule category).

Heading	U.S.	Canada	E.E.C.	Japan
7004.10		6.8%	6%, min. 0.60 Ecu/ 100 kg	4.2% : :
7004.10.10	4.9%			:
7004.10.20	2.8%			:
7004.10.50	4.9%			
7004.90		5.5%	6%, min.	
7004.90.05	0.8%		0.60 Ecu/	
7004.90.10	3.2%		100 kg	3.2%
7004.90.20	4.9%			4.8%
7004.90.25	3.2%			:
7004.90.30	0.5%			
7005.10	4.9%	5.5%	3.8%	7.9%
7005.21		4%	3.8%	7.9%
7005.21.10	16.1¢/m^2 (4.6% equiv.)			
7005.2120	6.3%			
7005.29		4%	3.8%	
7005.29.010				5.8%
7005.29.020				7.9%
7005.29.05	20.8¢/m^2 (8.45% equiv.)			
7005.29.15	16.1¢/m^2			
7005.29.25	6%			
7005.30	32.3¢/m^2 (2.5% equiv.)	4%	3.8%	7.9%
7006				1.9%
7006.00A			5.8%	
7006.00.10		5.5%		
7006.00.40	4.9%			
7006.00B			5.3%	
7006.00.90		6.8%		
7006.00.20	7.2%			
7007.11	6.2%			6.6%
7007.11A			Free	
7007.11B			5.8%	
7007.11.11		17.5%		
7007.11.19		9.2%		
7007.11.20		Free		
7007.11.30		10.2%		
7007.19	6.2%	10.2%	5.8%	5.8%
7007.21				Free
7007.21A			Free	
7007.21B			5.8%	
7007.21.10	5.5%			
7007.21.11		17.5%		
7007.21.19		9.2%		
7007.21.20		Free		
7007.21.30		10.2%		
7007.21.50	5.5%			
7007.29	5.5%	10.2%	5.8%	5.8%

Table 2 (Continued)
Comparison of U.S., Canadian, EEC, and Japanese MFN duty rates in the proposed Harmonized Schedules of those countries.
(Underscored duties of other countries exceed U.S. duties for the like Harmonized Schedule category).

Heading	U.S.	Canada	E.E.C.	Japan
7008.00	4.4%	10.2%	5.3%	1.9%
7009.10	7.8%	9.2%	6.5%	4.8%
7009.91		11.3%	6.5%	4.8%
7009.91.10	7.8%			
7009.91.50	10%			
7009.92		11.3%	6.5%	4.8%
7009.92.10	7.8%			
7009.92.50	10%			
7019.10			9.5%	4.6%
7019.10.10	7.4%	8.5%		
7019.10.21		12.5%		
7019.10.29		15%		
7019.10.30	6.2%			
7019.10.40	7.2%			
7019.10.60	6%			
7019.20			9.5%	5.1%
7019.20.10	6%	15.1%		
7019.20.20	8.3%			
7019.20.50	11.1%			
7019.20.90		25%		
7019.31.00	6.2%		9.5%	4.6%
7019.31.10		15%		
7019.31.90		25%		
7019.32	6.2%	25%	6.5%	4.6%
7019.39		10.2%	6.5%	4.6%
7019.39.10	6.2%			
7019.39.50	6.2%			
7019.90	6.2%		9.5%	4.6%
7019.90.10		25%		
7019.90.90		10.2%		

Source: Draft Harmonized Schedules of the U.S., Canada, the E.E.C. and Japan.

PPG requests that the Committee require the USTR to eliminate the discriminatory rates against U.S. exports identified in the above table in the forthcoming negotiations under Article XXVIII, GATT. Alternatively, PPG requests the Committee to include in any enabling legislation reported by the Committee a provision which adjusts the MFN tariff rates of the United States under the cited provisions of the proposed Harmonized Schedule to the same level as the rates of our major trading partners, the EEC, Canada and Japan, as described above.

III. PPG objects to the total failure of the USTR-TPSC* staff to make any constructive response whatsoever to PPG's previous recommendations as presented in its testimony and briefs at the November 21-22, 1983, public hearing, and in its written comments of November 1, 1984 on the ITC's draft of June 30, 1983, concerning the expansion and alignment of statistical annotations to

*-PPG's submissions to the USTR were to the Trade Policy Staff Committee. References to the TPSC or "the Committee" in PPG's submissions have, as referred to herein, been changed to "USTR" in the interest of clarity.

preserve to a greater degree that previous drafts a higher level of comparability between long-established, commercially correct classification criteria for flat glass embodied in existing U.S. import tariff and statistical classifications and the proposed H.S. headings for flat glass products. PPG continues to have serious reservations about the final work product presented in the October 1986 revision, and the total failure of the public hearing and written comment procedure which PPG faithfully participated in to yield even a modicum of due process by the USTR. Specifically -

A. In the "Additional U.S. Notes" to Chapter 70, the USTR has retained the base line criterion for colored flat glass of light transmittance properties "for glass 6.35 mm in thickness". As PPG pointed out in its brief and testimony to the USTR at the November 21-22, 1983 public hearing, and in PPG's written comments of November 1, 1984 on the ITC's draft of the proposed H.S. conversion submitted of June 30, 1983 -

> there is no industry, trade or scientific justification for this [6.35 mm in thickness] base line criterion. The U.S. industry trade standard is 1/4", which is equivalent to a nominal 6.0 mm, as properly expressed in Subpart B, headnote 2(c), Part 3, TSUS.

By retaining the identical light transmittance values expressed in the TSUS headnote, but increasing the thickness of the glass through which transmittance is to be measured, the USTR has effectively reduced the universe of flat glass which can qualify as "colored". This is the effect of the interaction of the USTR's 6.35 mm standard and the language "or the equivalent transmittances for any other thickness". The adoption of the noncommercial, unprecedented 6.35 mm standard will cause confusion in color specification and approval. The substitution of such a new, uncommercial standard violates the President's guidelines calling for simplification consonant with sound nomenclature principles which to the extent possible avoids changes significant for U.S. industry, workers and trade. The USTR has - over PPG's objections - introduced a criterion of selection which is improper and which will be trade distortive.

PPG requests that the Committee on Ways and Means require the USTR to revise the "Additional U.S. Notes" No. 2 by changing 6.35 mm in thickness to 6 mm in thickness. Alternatively, PPG requests that this Committee include in any enabling legislation a provision which specifically revises the "Additional U.S. Notes," as described above.

B. The USTR has failed to correct the ITC's departure from common U.S. usage in describing the quantity designations which will be denied entry unless packed in a specified manner. Par. 3 of the Additional U. S. Notes is unchanged from Par. 4 of the ITC's June 30, 1983 draft in retaining 4.6 m^2 and 9.2 m^2 as the size of the units in which imported flat glass is to be packed instead of retaining the uniform U.S. standard of 50 sq. ft. and 100 sq. ft. expressed in Subpart B, headnote 4, Part 3, TSUS. While 50 sq. ft. and 100 sq. ft. are closely equivalent to 4.6 m^2 and 9.2m^2 (the correct conversion is 4.645 m^2 and 9.290 m^2), the point of PPG's objection, previously communicated, is that the draftsmen have abandoned the stated purpose of conforming the terminology in the text of the Harmonized Schedule "to common U.S. usage" (USITC Publication No. 1400, June 1983, p. 22). The simplified schedule is supposed to be readily usable by the trade. The trade for generations has been accustomed to the 50 sq. ft. and 100 sq. ft. criteria. The USTR, as the ITC, has misconceived the President's suggestion that wherever consistent with his guidelines for achieving a commercially realistic nomenclature which avoids injuring domestic industry and workers, the classification adopt metric measurements. Neither the President's suggestion, his guidelines, nor the public policy expressed in The Metric Conversion Act of 1975 require such obdurate rejection of the expert testimony and briefing materials presented by PPG that such slavish substitution of metric measurement for historic and vital commercial designations will cause confusion to all factors in the trade and injure domestic producers and their workers.

PPG requests the Committee on Ways and Means to require the USTR to revise Chapter 70's Additional U.S. Note 3 by substituting "50 sq. ft. (or 4.65 m^2)" for 4.6 m^2, and "100 sq. ft. (or 9.3 m^2)" for 9.2 m^2 wherever they appear therein. Alternatively, PPG requests this Committee to include in any enabling legislation a specific provision which will change the Additional U.S. Notes as described above.

C. The USTR failed to correct the ITC's departure from long-established U.S. commercial and industry practice by specifying metric units in the article descriptions, units of quantity and rates of duty columns of the draft conversion. In its testimony, briefs and written comments, cited above, PPG recommended that those references be changed to conform to U.S. flat glass commerce and industry trade terms; viz., sq. ft. and lineal inches. As stated by PPG in its November 1, 1984 comments on the ITC's draft schedules of June 30, 1983 -

> the trade and commerce of the United States, including imports, in flat glass is under long-established commercial practice conducted in transaction terms of cents per square foot. Such usage is not only uniform throughout the markets of the United States, but also will continue in that mode for many years to come. The proposed alignment of the U.S. tariff schedules with the Harmonized Commodity Description and Coding System sponsored by the Customs Cooperation Council should be responsive to commercial reality in the United States. It is implicit in the President's guidelines that the Harmonized Schedule should use to the greatest extent practicable sound, well-established commercial nomenclature designations. The substitution of unused, unfamiliar metric units for the long-established commercial designations in the flat glass provisions of the existing Tariff Schedules is neither justified, consonant with commercial practice, nor required by either the President's guidelines or the Metric Conversion Act of 1975.
>
> The classification headings for clear flat glass, the very heart of the classification of the preponderance of flat glass products, unwisely substitute metric designations (m^2) for the square foot and united inch area designations of the TSUS. Square foot and united inch area measurements are long-established uniform practice in the U.S. market place. The substitution of m^2 for these concepts will result in confusion in the trade and commerce of the United States.

When the result will be positive harm to the trade and commerce of the United States, there is simply no justification for throwing out the entire mosaic of long-established commercial practice to achieve a slavish conformance to the European preference for metric measurements. Aligning U.S. tariff provisions to the structure of the Harmonized Schedule nomenclature does not require abandoning the units in which goods are uniformly priced and sold in the trade and commerce of the United States. Such action is contrary to both the President's guidelines and the Metric Conversion Act of 1975.

PPG requests the Committee on Ways and Means to require the USTR to substitute the square foot and linear area criteria of classification from the existing TSUS for the metric area criteria of the flat glass provisions of the draft conversion. This can be accomplished by utilizing the criteria specified in the attachment to PPG's written submission to the Secretary of the ITC of April 1, 1982, and Mr. John C. Reichenbach, Jr.'s letter of April 6, 1983, to Mr. Dave Beck, Office of Tariff Affairs, ITC, with copies, among others, to Ms. Phyllis O. Bonanno, Director, Private Sector Liaison, USTR, viz. -

> 1. Change metric configuration under all headings in the columns labeled 'Articles'; 'Units of Quantity'; and 'Rates of Duty' to U.S measurement terms (lbs., sq. ft., etc.).

2. Change the reference to glass area in sub-headings 7004.90.05, 7004.90.10, 7004.90.15, 7004.90.20, 7004.90.3010 and 7004.90.3050 from 0.26 m^2 (equivalent to 2.8 sq. ft.) to 2-2/3 sq. ft.

3. Change the reference to glass area in sub-headings 7004.90.2510, 7004.90.2520, and 7004.90.2550 from 0.26 m^2 to 2-2/3 sq. ft., and from 0.58 m^2 (6.2 sq. ft.) to 7 sq. ft.

4. Change the reference to glass area in sub-headings 7005.29.0500, 7005.29.1500 from 0.65 m^2 to 7 sq. ft.

D. The USTR also failed to correct the possibility of confusion introduced by the ITC into the meaning and content of the TSUS classification terminology, "Toughened (specially tempered) glass" by retaining over PPG's objection the possibly diluted term "toughened (tempered) safety glass" in Heading 7007 and 7007.11.00 in contradistinction with the term "toughened (specially tempered)" as applied to glassware in heading 7013.32.10. In its testimony, cited above, PPG recommended that the terminology for tempered flat glass and glassware not be changed from the TSUS formulation in view of the pending American Manufacturer's Protest challenging Customs' recent deviant interpretation of the term as applied to glassware. See Libbey Glass, Division of Owens-Illinois v. United States, Court No. 84-03-00410, Joined Issue Calendar, U.S. Court of International Trade. As stated in PPG's letter of November 1, 1984, to the USTR -

> These terms have a well-established connotation which is now made questionable by the elision of the word "specially" from the term "specially tempered" in the existing tariff schedules, as applied to flat glass. In view of the pending American Manufacturer's Protest in the U.S. Court of International Trade concerning the construction of the term "toughened (specially tempered)" as applied to household glassware, the USTR's acceptance of the ITC's draft is tantamount to taking sides with the foreign interests in that dispute. PPG objects to such preferential action by the USTR, and recalls to the Chairman's attention the colloquy on this subject at the public hearing in which he indicated that the USTR would not interfere with the Court's resolution of that issue.

PPG requests the Committee on Ways and Means to require the USTR to insert the word "specially" before "tempered" in headings 7007 and 7007.11.00. Alternatively, PPG requests the Committee to include in any enabling legislation a specific provision making this requested change.

E. The USTR ignored PPG's recommendation that the less than 10 mm in thickness classification of float glass, other than colored, be subdivided into four area subclassifications. PPG recommended (1) not over 2-2/3 sq.ft. in area; (2) over 2-2/3 but not over 7 sq.ft.; (3) over 7 sq.ft. but less than 5 mm in thickness; and (4) over 7 sq.ft. and 5 mm or greater in thickness. Instead, the USTR adhered to the ITC's draft simply dividing the less-than-10 mm-in-thickness category into not over 0.65 m^2 and over 0.65 m^2 in area. As stated by PPG in its submissions, and summarized in its November 1, 1984 submission to USTR commenting on the ITC's June 30, 1983 draft -

> The USTR's insensitivity to PPG's recommended subdivisions will result in throwing thin glass (residential construction use) in with heavy glass (commercial construction use), and small cut sizes, usually of single or double strength glass, in with the larger sizes, predominantly of heavy glass. Moreover, the USTR's action will lump in basket classifications billet and lehr end sizes, as shipped to glaziers for recutting, with the already-cut sizes. In short, the USTR's action would deprive the domestic industry and other traders in the market of meaningful statistics in commercially realistic categories. All factors in the market will be handicapped in evaluating consumption trends.

PPG requests the Committee on Ways and Means to require the USTR to substitute PPG's four recommended subclassifications for Headings 7005.29.05 and 7005.29.15. Alternatively, PPG requests the Committee to include in any enabling legislation the specific changes in subclassifications for those headings described above.

IV. The trade implications of the above-described deficiencies in the October 1986 draft conversion of the U. S. tariff classifications to the Harmonized System of Nomenclature are significant. The Committee on Ways and Means is requested to consider the adverse impact which USTR's failure to respond constructively to PPG's requests contained herein would have on U.S. trade in flat glass and fiber glass products. This is shown in Table II of the Appendix to this statement.

The data presented in Table II, Appendix, show that the volume of imports of the articles of flat glass and glass fiber discussed in these written comments is so large as to be significant whether considered in terms of the displacement effect of that volume on domestic production, or in terms of the contribution of the total value of such imports to the U.S. trade deficit. In terms of the trade and commerce of the United States, the flat glass and glass fiber tariff classifications define a major segment of commerce. The vice of the conversion from the TSUS provisions to the Harmonized System nomenclature and structure proposed by the USTR is that by eliminating the language and terminology of commerce long established for the conduct of the flat glass and glass fiber trade, the USTR will (a) cause confusion in the trade, (b) distort and diminish the value of the trade statistics in which the import data are such a significant component, (c) prevent the domestic industry and its workers from readily evaluating the specific adverse trends and impacts of imports on their livelihood, and (d) handicap all commercial factors in the glass trade. And to what purpose? To satisfy the desire of the Europeans to force the United States to conform its trade nomenclature to the less detailed, less exact metric measurements used in their markets? The EEC accounts for less than 25% of the value of U.S. imports of the affected categories of flat glass and glass fiber products. Has the EEC manifested any spirit of accommodation in international trade matters affecting the United States to cause the U.S. government to throw overboard the legitimate interests of its own producers and workers and all those involved in selling flat glass and glass fiber in the trade and commerce of the United States?

V. Conclusion. PPG is appealing to the Congress through the Committee on Ways and Means for a redress of its grievances against the proposed conversion formulated by the USTR which despite PPG's timely and repeated submissions has turned a deaf ear, refusing to heed PPG's expert views from the perspective of the flat glass and fiber glass trade, or to grant PPG's requests for the reform of the pending draft conversion while there is still time. Repeatedly PPG has presented its reasons for its concern and its expert marketwise advice to the USTR in the interests of all who are engaged in the import trade be they producers, distributors or importers. Until now this advice has not been heeded. PPG believes that the Congress intends, and the President expects, the USTR to moderate its singular drive to matricify U.S. commerce by balancing fairly the interests of domestic producers, workers and commercial interests where the departure proposed from long established commercial practice, concepts, terminology and sales terminology is so wrenching as to connote positive harm to the domestic interests.

Certainly, there can be no excuse for reducing the existing level of tariff protection contained in the MFN rates of the U.S. tariff schedules, as the USTR proposes doing in the many instances identified in Table 1 of these written comments. Nor is it in the trading interests of the United States for the negotiations for conversion of U.S. and other country tariffs to the Harmonized format to occur without rectifying the discriminatory treatment accorded by Canada, the E.E.C. and Japan to U.S. exports, as identified in Table 2 of these comments. Finally, the gratuitous designation of certain flat glass and fiber glass items for duty free GSP or Caribbean Basin Initiative treatment simply through the conversion process should be rectified.

The legislative oversight of the Committee on Ways and Means as it considers legislation to authorize the conversion of the U.S. tariff schedules to the so-called Harmonized Schedules is the last and best hope of PPG for the remedial actions which it has detailed in this written statement. PPG accordingly urges and requests the Committee on Ways and Means to give the utmost serious consideration to these written views and the requests for Committee action contained herein. Its undersigned special counsel are available to consult with the staff of the Committee concerning these views and requests. PPG asks that they be given the opportunity for such consultation at the convenience of the Committee's staff.

Respectfully submitted,

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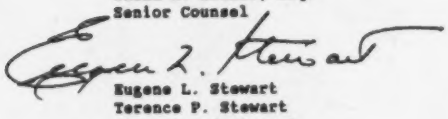

Eugene L. Stewart
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Special Counsel

APPENDIX TO PPG'S COMMENTS TO THE COMMITTEE ON WAYS AND MEANS
RE THE THIRD EDITION OF THE PROPOSED CONVERSION
OF THE TSUS INTO THE HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM
ISSUED BY THE USTR IN OCTOBER 1986

Table I
PPG Industries: Comparison of U.S. Proposed Harmonized Code Duty Rate With Ad Valorem Equivalent of Duty Rates of the Related TSUS Items.
(Undescored rates in Harmonized Schedule MFN Column are reductions from the corresponding TSUS equivalent ad valorem 1987 rates)

Heading	Article Description	MFN Rate & & pref. status*	TSUS Item(s)	Ad val. equiv. of MFN rate*	'85 Imp. volume (units)
7004.10.10	Sheet glass w/reflecting layer.....	4.9% A, E	544.1840	4.9% A, E	10,071,711
7004.10.20	Colored sheet glass, in rectangular shape..	2.8% A, E	542.5700; 542.6700; 542.7100; 542.7300;	3.3% A,E	10,121,759
7004.10.50	Colored sheet glass, other than rectangular shape.....	4.9% A, E	542.7500; 542.7700; 542.9200; 542.9400; 542.9600; 542.9800		
	Other sheet glass, in rectangular shape:		Ordinary sheet glass:		
	Measuring not over 1.5 mm in thickness:		Ov 4 but not ov12 oz/sqft		
7004.90.05	Measuring not over 2.6 m^2 in area.....	0.8%, E	542.1100;	1.2%, E	5,456,231
7004.90.10	Meas. ov 0.26m^2 area Meas ov 1.5 but not ov 2 mm in thickness:....	3.2%, E	542.1300.	2.9%, E	10,309,995
7004.90.15	Meas not ov 0.26 m^2 in area.....	2.8%, E			
7004.90.20	Meas ov 0.26 m^2 area	4.9%, E			
	Meas ov 2 but not ov 3.5 mm in thickness:		Ov 12 but not ov 16 oz/sqft		
7004.90.2510	Meas not ov 0.26 m^2 in area.....	3.2%, E	542.2100	3.9%, E	5,829,677
7004.90.2520	Meas ov 0.26 but not ov 0.58 m^2 in area..	3.2%, E	542.2300	5.5%, E	2,997,319
7004.90.2550	Meas ov 0.58 m^2 area	3.2%, E	542.2500	6.5%, E	1,392,568
	Meas ov 3.5 mm thick: Meas not ov 0.26 m^2 in area:		Ov 16 but not ov 28 oz/sqft		
7004.90.3010	Meas ov 3.5 but not ov 5 mm in thickness.....	0.5%, E	542.3120; 542.3140; 542.3170;	3.1% A E	31,962,079

-Duty-free treatment is provided for articles from eligible countries under the programs designated by the following letters: A or A-Generalized System of Preferences; B-Automotive Products Trade Act; C-Agreement on Trade in Civil Aircraft; E or E*-Caribbean Basin Economic Recovery Act. The presence of one or more of these letters following the MFN rate indicates that imports from eligible countries under those programs are duty-free. The ad valorem equivalent of the existing (1987) MFN rate was derived from FAS value of imports for 1985 (the latest year available) and the duty payments which would have accrued for that volume and value of imports at the 1987 duty rate. Source: 1985 import data, Bu. Census IM 145 and 146 tapes.

Table I (Continued)

Heading	Article Description	MFN Rate & & pref. status*	TSUS Item(s)	Ad val. equiv. of MFN rate*	'85 Imp. volume (units)
			542.3320; 542.3340; 542.3370; 542.3520; 542.3540; 542.3570; 542.3720; 542.3740; 542.3770.	)	
7004.90.3020	Meas ov 5 mm thick....	0.5%, E	542.4220; E 542.4250; E 542.4420; E 542.4450; E 542.4620; E 542.4650; E 542.4815; E 532.4835. E	) 0.9%	4,267,399
7004.90.3050	Meas ov 0.26 m^2 area	0.5%, E	Included in above TSUSAs		
	Float glass, unworked:		Float glass:		
7005.10.00	Having an absorbent or reflecting layer.....	4.9% A, E	544.1820	4.9% A E	5,739,630
	Colored:		Colored:		
7005.21.10	Meas less than 10 mm in thickness.....	16.1¢/m^2 E	543.6100;	)17.4¢/m^2	2,703,298m^2
7005.21.1000	Meas less than 5 mm in thickness.....		543.6300;	) E	
7005.21.1030	Meas 5 mm or more but less than 10 mm thick.		543.6700.	)	
7005.21.2000	Meas 10 mm or more in thickness.....	6.3%, E	543.6900	6.3%, E	47,840
	Other than colored:		Not colored:		
	Meas less than 10 mm in thickness:				
7005.29.05	Meas not ov 0.65 m^2 in area.....	20.8¢/m^2 E	543.2100; 543.2300.	)20.9¢/m^2 E	984,636 m^2
7005.29.15	Meas ov 0.65 m^2 area	16.1¢/m^2 E	543.2700		0
7005.29.25	Meas 10 mm or more in thickness.....	6%, E	543.3100	6%, E	1,110,816
7005.30	Wired glass.....	32.3¢/m^2 A, E	543.1100	32.3¢/m^2 A, E	802,568 m^2

Table I (Continued)

Heading	Article Description	MFN Rate & & pref. status*	TSUS Item(s)	Ad val. equiv. of MFN rate*	'85 Imp. volume (units)
7004.90.50	Sheet glass other than in rectangular shape	4.9% A E			
	Glass (whether float, sheet or cast/rolled) bent, edge-worked, engraved, drilled, enamelled or otherwise worked, but not framed or fitted with other materials:		Glass, etc. other than in rectangles and whether or not in rectangles if subjected to bending, edging or other working:		
	Other than strips:				
7006.00.20	Sheet glass, not containing wire netting:	7.2% A E	544.1600	7.2% A, E	5,455,880
	Float & other glass:		Float, etc:		
7006.00.4010	Having an absorbent or reflecting layer.....	4.9% A E	544.1820	4.9% A, E	5,739,630
7006.00.4050	Other.....	4.9%	544.1840	4.9%	10,071,711
	Safety glass, consisting of toughened (tempered) or laminated glass:				
	Toughened (tempered):				
7007.11	Suitable for use in vehicles, aircraft, spacecraft or vessels.	6.2% A, C, E	544.3100	6.2% A, E	52,839,069
7007.19	Other.....	6.2%, A E			
	Laminated safety glass Suitable for use in vehicles, aircraft, spacecraft or vessels:		544.4120;	5.5% A, E	81,858,834
7007.21.10	Windshields.....	5.5% A, C	544.4300.	Free	22,189
	Other.....	5.5% A, E	544.4140	5.5% A, E	84,457,204
7007.29	Other.....	5.5% A, E			
7008.00	Multiple-walled insulating units of glass..	4.4% A, E	544.6100	4.4% A, E	104,969
	Glass mirrors, whether or not framed, including rear-view mirrors:		Mirrors...of glass, w/ or w/o cases:		
7009.10	Rear-view mirrors for vehicles.....	6.8% A, E	544.5100	7.8% A, E	57,045,528 (Part)
	Other:				
	Unframed:				
7009.91.10	Not ov 929 cm^2 in reflecting area.....	7.8% A, E	544.5100	7.8% A, E	57,045,528 (Part)
7009.91.50	Ov 929 cm^2 in reflecting area.....	10%, A, E	544.5400	10% A, E	21,612,545

Table I (Continued)

Heading	Article Description	MFN Rate & & pref. status*	TSUS Item(s)	Ad val. equiv. of MFN rate*	'85 Imp. volume (units)
	Framed:				
7009.92.10	Not ov 929 cm^2 r.area	7.8% A, E	544.5100	7.8% A, E	57,045,528 (Part)
7009.92.50	Ov 929 cm^2 in r.area	10% A, E	544.5400	10% A, E	21,612,545 (Part)

Heading	Article Description	MFN Rate & & pref. status*	TSUS Item(s)	Ad val. equiv. of MFN rate*	'85 Imp. volume (units)
	Glass fibers...and articles thereof:				
	Slivers, rovings, yarn and chopped strands:				
			Yarns of glass:		
7009.10.10	Yarns.....	7.4%	309.9800; 309.9900.	) 7.7%	3,849
7009.10.30	Chopped strands.....	6.2% A, E	540.7100	6.2% A, E	31,996,489
7009.10.40	Rovings.....	7.2%	309.2800; 309.2900	6.0% 7.2%	)29,366,342)
7009.10.60	Other.....	6.0%			
	Woven fabrics:				
7019.20.10	Narrow fabrics.....	6.0%	347.6800; 347.6900.	6.0% 7.2	) 464,824)
	Other woven fabrics:				
7019.20.20	Not colored.....	8.3%	338.2500	8.3%	18,743,363
7019.20.50	Colored.....	11.1%	338.2700	11.1%	662,696
	Thin sheets (voiles), webs, mats, mattresses, boards and similar non-woven articles:				
7019.31.00	Mats.....	6.2% A, E	) 540.7100	6.2% A, E	$31,996,489
7019.39.10	Glass wool insulation.	6.2% A, E	)		
7019.39.50	Other non-woven articles.....	6.2% A, E	)		
7019.32	Thin sheets (voiles)	6.2% A, E	387.5900	6.9%	
7019.90	Other.....	6.2% A, E	540.7100	6.2% A, E	

Source: Draft conversion of October 1986, and USITC, TSUSA, 1986 w/July 1 amendments, and Pres. Proc. No. 4707, Dec. 11, 1979, 44 Fed. Reg. 72348.

Table II
U.S. Imports of Flat Glass and Fiber Glass Products
from its principal Harmonized Code Trading Partners, 1985
(Quantity in 000's units; Value, FAS origin in $000's)

Heading	Commodity	Countries of Origin				Total Imports
		Canada	the EEC	Japan	Others	
7004.10.10 (544.1840)	Sheet glass w/reflecting layer.....	314 $506	3,623 $5,565	86 $7,189	6,049 $7,655	10,072 $20,915
7004.10.20 (542.5700) (542.6700) (542.7100) (542.7300)	Colored sheet glass, in rectangular shape	0 0	1,093 $1,729	3 $10	1,624 $267	2,720 $2,006
7004.10.50 (542.7500) (542.7700) (542.9200) (542.9400) (542.9600) (542.9800)	Colored sheet glass, other than rectangular shape.....	0 0	1,978 $1,666	33 $13	5,391 $1,212	7,402 $2,891
	Other sheet glass, in rectangular shape:					
	Measuring not over 1.5 mm in thickness:					
7004.90.05 (542.1100)	Measuring not over 2.6 m^2 in area.....	0 0	3,175 $2,236	9 $34	2,272 $934	5,456 $3,204
7004.90.10 (542.1300)	Meas. ov 0.26m^2 area:	47 $13	4,963 $1,422	0 0	5,300 $1,776	10,310 $3,211
	Meas ov 2 but not ov 3.5 mm in thickness:					
7004.90.2510 (542.2100)	Meas not ov 0.26 m^2 in area.....	0 0	4,291 $1,300	0 0	1,539 $202	5,830 $1,502
7004.90.2520 (542.2300)	Meas ov 0.26 but not ov 0.58 m^2 in area	0 0	2,482 $538	0 0	515 $64	2,997 $602
7004.90.2550 (542.2500)	Meas ov 0.58 m^2 area	0 0	1,221 $235	0 0	172 $23	1,393 $258
	Meas ov 3.5 mm thick:					
	Meas not ov 0.26 m^2 in area:					
7004.90.3010 (542.3120) (542.3140) (542.3170) (542.3320) (542.3340) (542.3370) (542.3520) (542.3540) (542.3570) (542.3720) (542.3740) (542.3770)	Meas ov 3.5 but not ov 5 mm in thickness.....	0 0	4,562 $1,455	- $2	27,400 $2,805	31,962 $4,262

Table II (Continued)
U.S. Imports of Flat Glass and Fiber Glass Products
from its principal Harmonized Code Trading Partners, 1985
(Quantity in 000's units; Value, FAS origin in $000's)

Heading	Commodity	Countries of Origin				Total Imports
		Canada	the EEC	Japan	Others	
7004.90.3020 (542.4220) (542.4250) (542.4420) (542.4450) (542.4620) (542.4650) (542.4815) (532.4835)	Meas ov 5 mm thick....	4 $5	2,125 $2,112	43 $27	2,095 $545	4,267 $2,689
7004.90.3050 Included in above TSUSA's	Meas ov 0.26 m^2 area					
	Float glass, unworked:					
7005.10.00 (544.1820)	Having an absorbent or reflecting layer.....	5 $83	4,748 $6,013	116 $9,238	871 $1,181	5,740 $16,515
	Float glass, unworked:					
	Colored:					
7005.21.10 (543.6100) (543.6300) (543.6700)	Meas less than 10 mm in thickness.....	17,133 $5,576	8,097 $2,662	1,127 $885	2,741 $1,186	29,098 $10,309
7005.21.20 (543.6900)	Meas 10 mm or more in thickness.....	2 $114	28 $26	15 $63	3 $5	48 $208
	Other than colored:					
	Meas less than 10 mm in thickness:					
7005.29.05 (543.2100) (543.2300)	Meas not ov 0.65 m^2 in area.....	1,017 $343	5,144 $821	54 $259	4,383 $1,015	10,598 $2,438
7005.29.15 (543.2700)	Meas ov 0.65 m^2 area	0 0	0 0	0 0	0 0	0 0
7005.29.25 (543.3100)	Meas 10 mm or more in thickness.....	14 $16	141 $278	84 $199	872 $1,469	1,111 $1,962
7005.30 (543.1100)	Wired glass.....	10 $15	1,379 $1,471	7,148 $8,671	102 $32	8,639 $10,189
7004.90.50 (included in 544.1600)	Sheet glass other than in rectangular shape:					
	Glass (whether float, sheet or cast/rolled) bent, edge-worked, engraved, drilled, enamelled or otherwise worked, but not framed or fitted with other materials:					

Table II (Continued)
U.S. Imports of Flat Glass and Fiber Glass Products
from its principal Harmonized Code Trading Partners, 1985
(Quantity in 000's units; Value, FAS origin in $000's)

Heading	Commodity	Countries of Origin				Total Imports
		Canada	the EEC	Japan	Others	
	Other than strips:					
7006.00.20 (544.1600)	Sheet glass, not containing wire netting:	0	3,065	614	1,777	5,456
		0	$3,077	$394	$1,212	$4,683
	Float & other glass:					
7006.00.4010 (544.1820)	Having an absorbent or reflecting layer.....	5	4,748	116	871	5,740
		$83	$6,013	$9,238	$1,181	$16,515
7006.00.4050 (544.1840)	Other.....	314	3,623	86	6,050	10,072
		$506	$5,565	$7,189	$7,655	$20,915
	Safety glass, consisting of toughened (tempered) or laminated glass:					
	Toughened (tempered):					
7007.11 (544.3100)	Suitable for use in vehicles, aircraft, spacecraft or vessels.)	4,914	3,222	4,837	39,866	52,839
		$4,837	$9,200	$14,025	$40,708	$68,770
7007.19 (544.3100)	Other.....)					
	Laminated safety glass: Suitable for use in vehicles, aircraft, spacecraft or vessels:					
7007.21.10 (544.4120) (544.4300)	Windshields.....	13,285	5,972	4,095	58,529	81,881
		$37,899	$20,341	$12,426	$17,039	$87,705
7007.21.50 (544.4140)	Other.....)					
		$548	$2,421	$243	$1,245	$4,457
7007.29 (544.4140)	Other.....)					
7008.00 (544.6100)	Multiple-walled insulating units of glass..	32	9	21	43	105
		$2,426	$771	$144	$3,427	$6,768
	Glass mirrors, whether or not framed, including rear-view mirrors:					
7009.10 (544.5100)	Rear-view mirrors for vehicles.....)					
	Other:					
	Unframed:	428	5,272	3,869	47,477	57,046
7009.91.10 (544.5100)	Not ov 929 cm^2 in reflecting area.....:	$1,230	$5,176	$13,092	$32,567	$52,065
	Framed:					
7009.92.10 (544.5100)	Not ov 929 cm^2 r.area)					

Table II (Continued)
U.S. Imports of Flat Glass and Fiber Glass Products
from its principal Harmonized Code Trading Partners, 1985
(Quantity in 000's units; Value, FAS origin in $000's)

Heading	Commodity	Countries of Origin: Canada	the EEC	Japan	Others	Total Imports
	Unframed:					
7009.91.50 (544.5400)	Ov 929 cm^2 in reflecting area	978	7,723	6,812	6,100	21,613
	Framed:	$1,479	$8,455	$5,645	$9,514	$25,093
7009.92.50 544.5400	Ov 929 cm^2 in r.area)					
	Glass fibers...and articles thereof:					
	Slivers, rovings, yarn and chopped strands:					
7009.10.10 (309.9800) (309.9900)	Yarns	0	-	4	0	4
		0	$1	$22	0	$23
7009.10.30 (540.7100)	Chopped strands	$10,697	$10,490	$4,259	$6,550	$31,996

Note: Values shown for 7009.10.30 based on TSUS 540.7100 are overstated inasmuch as the same TSUS is the predicate for values shown on next page for headings 7019.31.00, .39.10, .39.50 and 7019.90.

7009.10.40 (309.2800) (309.2900)	Rovings	572	4,018	23,744	1,032	29,366
		$530	$3,631	$14,339	$542	$19,042
7009.10.60 (309.2800) (309.2900)	Other					
	Woven fabrics:					
7019.20.10 (347.6800) (347.6900)	Narrow fabrics	47	6	12	400	465
		$104	$13	$76	$564	$757
	Other woven fabrics:					
7019.20.20 (338.2500)	Not colored	2,281	3,562	3,487	9,413	18,743
		$2,257	$3,656	$3,887	$6,724	$16,524
7019.20.50 (338.2700)	Colored	249	414	0	0	663
		$199	$429	0	0	$628
	Thin sheets (voiles), webs, mats, mattresses, boards and similar non-woven articles:					
7019.32 (367.5900)	Thin sheets (voiles)	0	0	0	0	0
		0	0	0	0	0

Table II (Continued)
U.S. Imports of Flat Glass and Fiber Glass Products
from its principal Harmonized Code Trading Partners, 1985
(Quantity in 000's units; Value, FAS origin in $000's)

Heading	Commodity	Countries of Origin				Total
		Canada	the EEC	Japan	Others	Imports
7019.31.00	Mats.....)					
540.7100	:					
	:					
7019.39.10	Glass wool insulation.:					
540.7100	:	$10,697	$10,490	$4,259	$6,550	$31,996
	:					
7019.39.50	Other non-woven :					
540.7100	articles.....:					
	:					
7019.90	Other.....)					
540.7100						
Grand total of the above headings:		$69,466	$108,768	$111,569	$149,299	$439,102

Note: the aggregate value shown for the last four headings, above, is overstated inasmuch as the predicate for those values, TSUS Item 540.7100 is also the predicate for Heading 7009.10.30, at the center of page 8, supra.

Source: Import data, Bureau of Census, IM 145/146 tapes. Concordance of H.S. headings and TSUS Items, Table I, Appendix. Note: the above totals avoid double counting the values referred to in the note on pages 19 and 20.

COMMENTS
OF
RHONE-POULENC INC.

ON THE PROPOSED CONVERSION OF THE
TARIFF SCHEDULES OF THE UNITED STATES
INTO THE NOMENCLATURE STRUCTURE
OF THE HARMONIZED SYSTEM AS
IT RELATES TO SILICONE PRODUCTS

These written comments are submitted pursuant to request of The Honorable Sam M. Gibbons, Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, for written testimony for the record on the third edition of the proposed conversion of the Tariff Schedules of the United States (TSUS) into the nomenclature structure of the Harmonized Commodity Description and Coding System (Harmonized System), issued in October 1986. This third edition is the culmination of over ten years of study, drafting and discussion amongst the tariff experts of the United States and much of the world. Study for the HS was intially developed by the Customs Cooperation Council with United States participation.

The United States participated in the development of the Harmonized System in accordance with section 608(c) of the Trade Act of 1974. At the request of the President, the U.S. International Trade Commission has prepared the draft conversion of the TSUS into the nomenclature structure of the Harmonized System. The United States Trade Representative ("USTR") heretofore requested written comments from the public on the conversion. The United States and other major trading coutries have set January 1, 1988, as the target date for implementation of the Harmonized System, subject to Congressional approval. After ten years of study and discussion this third edition of the proposed conversion is ready for adoption.

STATEMENT OF POSITION:

Rhone-Poulenc Inc. ("RP") is a U.S. corporation with corporate offices in New York, New York and with principal business offices at P.O. Box 125, Black Horse Lane, Monmouth Junction, New Jersey.

RP imports many silicone and other products which, in addition to products manufactured in the U.S., are distributed on a national basis. RP employs 3,750 individuals and has manufacturing facilities in Georgia, Missouri, New Jersey, Oregon, Pennsylvania, Tennessee, Texas, Washington and West Virginia.

In October 1986, the Trade Policy Staff Committee, Office of the USTR, in its report on the conversion into a Harmonized System, proposed that silicone fluids, resins and rubbers be classified in one tariff item (3910.00), with three subheadings, each subject to a different duty rate. The Harmonized System recognizes the significant chemical and physical differences in the various forms of silicone products in both appearance and application. For ease of reference we have attached hereto a copy of the conversion of Tariff Schedule of the United States into the HS reflecting the provision of 3910.00.

The net results of the enactment of the legislation would be that the current duty rate would continue to appiy to each of these silicone products. The conversion of the tariff rates into the Harmonized System reflects established and ongoing Customs practices. The October 1986 report is consistent with the Presidential mandate. It does not impose new administrative

burdens, nor increase new rates affecting silicone products. The proposed conversion is "trade neutral" and is in keeping with our international obligations to our trading partners.

RP urges the enactment of legislation to effect the Harmonized System for a number of reasons.

At the Multilateral Trade Negotiations ("MTN") under GATT, U.S. trading partners negotiated in good faith for specific rates of U.S. Customs duties for the various silicone products, and the United States agreed to be bound to those negotiatied rates under GATT. The current duty rates are bound in the U.S. Schedule XX of the General Trade Agreement on Tariffs and Trade and cannot be changed except in accordance with specific procedures of GATT.

Deviations from the Trade Policy Staff Committee report, resulting in an increase of duty rate, could subject the United States either to claims for compensation or to retaliation by affected countries.

The United States has made a conscientious decision to participate in various MTN's under GATT as to tariff rates. Having made that decision, it would not be prudent for the United States to ignore the recommendations of tariff experts (U.S. and International) as to the proposed conversion. Deliberations by the tariff experts in the nomenclature classification of products have reached objective duty rate balances in the converstion. Any deviations from the Harmonized System resulting in an increase of duty rates would harm U.S. companies using imported silicones. Indeed, increasing rates would be discriminatory against the importers and users of imported silicone products and a violation of the U.S. obligations entered into during the Tokyo - Round of the MTN under GATT.

The proposed conversion to the Harmonized System evolves from a Presidential mandate that the U.S. tariff structure be simplified to the extent possible without rate changes significant for U.S. industry, workers and trade.

The Harmonized System reflects the Presidential mandate and preserves the present equities. Although the Harmonized System still provides a competitive edge for the U.S. manufacturers, it preserves the relative competitive positions between U.S. manufacturers and importers. The opponents of the Harmonized System would have the public believe that adoption of the Harmonized System would effectively reduce the duty rate applicable to a substantial portion of the silicone importers and erode the competitive position of the U.S. silicone industry. The facts are that the Harmonized System preserves the status quo and the U.S. silicone industry will continue to enjoy its present competitive edge. Any deviations from the status quo would place the importers of silicone products at a greater competitive disadvantage than presently exists.

Indeed any deviation from the Harmonized System resulting in an increase of duty rate on imported silicone products would injure not only the importers of silicone products but would also injure innocent U.S. industries not at all involved with silicone products. It is conceded that our trading partners

would take retaliatory action and impose corresponding duty rate increases on U.S. exports.

Given the existing severe trade imbalance, deviation from the Harmonized System is not the proper signal to give to our trading partners. Retaliatory action by our trading partners would have the net effect of reducing exports of U.S. product due to increased duty rates, negatively impacting upon the trade balance. The United States is at a cross-road on this matter. It would be prudent for the United States to adopt the Harmonized System and not give our trading partners the opportunity to retaliate, further widening the trade imbalance between the U.S. and our trading partners with the net result -- of lost profits for American industries -- lost jobs for American workers.

Even if our trading partners would elect not to retaliate in the event the U.S. fails to adopt the Harmonized System as recommended, any deviation from the Harmonized System would still have the detrimental effect of giving approval to unilateral to concessions and unilateral compensation. In the future, our trading partners may point to this example in contending that since the United State can choose the compensation for its violations, then our trading partners in turn should be able to choose the compensation when they change their duties unilaterally.

The United States is committed itself to certain conversion objectives agreed upon by U.S. world tariff and nomenclature experts. This objective to foster trade with our trading partners has been developed. The United States should adopt a harmonized system to facilitate trade among its trading partners, and it would be prudent for Congress to enact legislation to effect the conversion of the Tariff Schedules of the United States into the nomenclature of the Harmonized System.

WHEREFORE, it is respectfully submitted that the Congress approve the implementation of the proposed conversion which has been the culmination of over ten years of study and discussion and which would be beneficial to U.S. industry, labor and trade.

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TARIFF SCHEDULE OF THE UNITED STATES ANNOTATED

(Converted to the Harmonized System and reflecting final MTN concession rates of duty)

39-6

Heading	Stat. Suffix	Article Description	Units of Quantity	Rates of Duty 1 General	Rates of Duty 1 Preferential	Rates of Duty 2
3910.00		Silicones in primary forms:				
3910.00.10	00	Elastomeric	kg	Free		20%
		Other:				
3910.00.20	00	Dimethylsiloxane fluids	kg	3.7%		25%
3910.00.50	00	Other	kg	2.2¢/kg + 7.7%		33.5%
3911		Petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products specified in legal note 3 to this chapter, not elsewhere specified or included, in primary forms:				
3911.10.00	00	Petroleum resins, coumarone, indene, or coumarone-indene resins; polyterpenes	kg	6.1%		15.4¢/kg + 49%
3911.90		Other:				
3911.90.10	00	Elastomeric	kg	Free		20%
		Other:				
		Containing monomer units which are aromatic or modified aromatic, or which are obtained, derived, or manufactured in whole or in part therefrom:				
3911.90.20	00	Thermoplastic	kg	6.1%		15.4¢/kg + 49%
3911.90.30	00	Thermosetting	kg	5.8%		15.4¢/kg + 45%
3911.90.50		Other		2.2¢/kg + 7.7%		33.5%
	10	Thermoplastic	kg			
	50	Thermosetting	kg			
3912		Cellulose and its chemical derivatives, not elsewhere specified or included, in primary forms:				
		Cellulose acetates:				
3912.11.00	00	Nonplasticized	kg	5.6%		73.5%
3912.12.00	00	Plasticized	kg	5.6%		73.5%
3912.20.00	00	Cellulose nitrates (including collodions)	kg	5.2%		34.5%
		Cellulose ethers:				
3912.31.00	00	Carboxymethylcellulose and its salts	kg	6.4%		66%
3912.39.00	00	Other	kg	4.2%		33.5%
3912.90.00	00	Other	kg	5.2%		34.5%
3913		Natural polymers (for example, alginic acid) and modified natural polymers (for example, hardened proteins, chemical derivatives of natural rubber), not elsewhere specified or included, in primary forms:				
3913.10.00	00	Alginic acid, its salts and esters	kg	4.2%		25%
3913.90		Other:				
3913.90.10	00	Chemical derivatives of natural rubber	kg	Free		20%
3913.90.20	00	Polysaccharides and their derivatives	kg	5.8%		50%
3913.90.50	00	Other	kg	2.2¢/kg + 7.7%		33.5%
3914.00.00	00	Ion-exchangers based on polymers of headings 3901 to 3913, in primary forms	kg	3.9%		35%

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New York - February 25, 1987

Mr. Joseph K. Dowley
Chief Counsel Committee on Ways and Means
U.S. House of Representatives, Room 1102
Longworth House Office Building
Washington, DC 20515

Re: Comments on the Harmonized System

Dear Mr. Dowley:

A news release dated Monday, January 12, 1987 invited the public to comment on the adoption of the Harmonized System (HS).

On behalf of our client Rokina International, Inc. of Irvington, New Jersey, we wish to submit for your review the attached comments which were sent to the Secretary, Trade Policy Committee, Office of the U.S. Trade Representative (USTR) on January 28, 1987.

Our letter requested that a separate breakout for textile camera bag components be provided for under the HS so that the parts could continue to be imported free of duty under the Generalized System of Preferences (GSP).

We have pointed out to the USTR that the President had directed them "to avoid tariff-rate changes to the extent practicable and to simplify the tariff where possible without rate changes significant for U.S. industry, workers, or trade."

If this issue is not addressed by the USTR we would appreciate your favorable action upon review of the HS.

We thank you for your consideration of our request and would appreciate an opportunity to discuss this matter further at your convenience.

Sincerely,

SERKO, SIMON & ABBEY

Joel K. Simon

JKS/dg
Enclosure
CC: Senator Joseph R. Biden
Senator William V. Roth, Jr.
Congressman Thomas R. Carper

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New York - January 29, 1987

Ms. Carolyn Frank
Secretary, Trade Policy Staff Committee
Office of the U.S. Trade Representative, Room 521
600 17th Street, N.W.
Washington, D.C. 20506

Re: COMMENTS ON THE HARMONIZED SYSTEM
HEADING 6307.90.80

Dear Ms. Frank:

On behalf of our client Rokina International, Inc. of Irvington, New Jersey, we wish to submit the following comments on the third edition of the proposed conversion of the Tariff Schedules of the United States (TSUS) into the nomenclature structure of the Harmonized Commodity Description and Coding System (HS).

Our client is a major importer of camera bag components. These components are currently imported under the provision for other ornamented textile articles, nspf, of man-made fibers in TSUS item 386.1343, and are eligible for GSP benefits from various beneficiary countries.

We believe that these camera bag components would be

classified under heading 6307.90.80 of the HS. This heading does not reflect any GSP designation.

Since our client now imports these camera bag components with the benefit of GSP, he is able to provide employment for skilled U.S. workers who assemble the components into finished articles.

It is his feelings that if he is unable to import these components duty free, he will have to import finished bags assembled abroad eliminating employment for U.S. workers, in order to remain competitive.

We have been requested by the domestic assembler of these camera bags, Clayton East Wind of Clayton, Del. to express his concern at the possible elimination of work. Their only function is to assemble camera bags. The factory is located in the small community of Clayton, Delaware which has a population of 1,300 people. Clayton East Wind is a major source of employment for this community.

The loss of employment would be a severe blow to the community.

Conclusion

For the above reasons, we propose that textile camera bag components be provided for separately under the Harmonized heading as follows:

Heading No.	Description	Duty Rate	Special
4202.92.40	Parts of luggage . . .	7%	FREE (A)

We thank you for your consideration of our request and would appreciate an opportunity to discuss this matter further at your convenience.

Sincerely,

SERKO, SIMON & ABBEY

Joel K. Simon

JKS/ms

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New York - February 25, 1987

Mr. Joseph K. Dowley
Chief Counsel Committee on Ways and Means
U.S. House of Representatives, Room 1102
Longworth House Office Building
Washington, DC 20515

Re: Comments on the Harmonized System

Dear Mr. Dowley:

A news release dated Monday, January 12, 1987 invited the public to comment on the adoption of the Harmonized System (HS).

On behalf of our client Russ Berrie & Company, Inc. of Oakland, New Jersey, we wish to submit for your review the attached comments which were sent to the Secretary, Trade Policy Committee, Office of the U.S. Trade Representative (USTR) on January 28, 1987.

It is our contention that the duty rate of 17% for Heading 9505.10.50 of the HS was incorrectly formulated.

According to the 1983 ITC conversion table, this rate was arrived at by averaging duty rates of items 534.9700, 748.1500 and 748.2100 of the TSUS. As noted on page 8 of our referenced submission, many other TSUS item numbers should have been used to calculate the duty rate for 9505.10.50.

Our client imports numerous Christmas ornaments/articles made of wood, paper, metal, ceramic, textile materials, etc. which are suitable for Christmas festivities. It is our opinion that many of these products, which are dutiable at rates as low as 3.2%, would become dutiable at 17% under the HS.

We have pointed out to the USTR that the President had directed them "to avoid tariff-rate changes to the extent practicable and to simplify the tariff where possible without rate changes significant for U.S. industry, workers, or trade."

The current low rates of duty for these products makes them readily available on the retail market. The duty increase to 17% could not be absorbed by our client and would therefore, have to be passed on to the ultimate consumer.

Christmas articles constitute an important portion of our client's business. Any reduction in the retail sale of their products would ultimately affect their employees.

If this issue is not addressed by the USTR we would appreciate your favorable action upon review of the HS.

We thank you for your consideration of our request and would appreciate an opportunity to discuss this matter further at your convenience.

Sincerely,

SERKO, SIMON & ABBEY

Joel K. Simon

JKS/dg
Enclosure

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New York - January 28, 1987

Ms. Carolyn Frank
Secretary, Trade Policy Staff Committee
Office of the U.S. Trade Representative, Room 521
600 17th Street, N.W.
Washington, D.C. 20506

Re: COMMENTS ON HARMONIZED SYSTEM
HEADING 9505

Dear Ms. Frank:

On behalf of our client Russ Berrie & Co. Inc., we wish to submit the following comments on the third edition of the proposed conversion of the Tariff Schedules of the United States (TSUS) into the nomenclature structure of the Harmonized Commodity Description and Coding System (HS).

Our client imports numerous Christmas ornaments/articles which are made of wood, paper, metal, ceramic, textile materials, etc. These articles frequently have Christmas motifs.

CURRENT CUSTOMS TREATMENT OF CHRISTMAS ARTICLES

Currently under TSUS, wooden Christmas articles/ornaments are classified under the provision for articles of wood, not specifically provided for (nspf), in item 207.00, dutiable at

the rate of 5.1%. In support of this, note the attached copy (Exhibit A) of a memorandum for the U.S. Trade Representative, dated January 2, 1987. This memorandum refers to actions concerning the Generalized System of Preferences (GSP). Annex B of this memorandum classifies wood Christmas ornaments under TSUS 207.0020. Also note attached copy of Customs Headquarters letter 048411C, dated March 14, 1977 (Exhibit B).

Metal Christmas articles/ornaments are classified under the provision for articles of iron or steel, nspf in TSUS item 657.25 at 5.7%.

Christmas candles are classified under the provision for candles and tapers at 5.8% in TSUS item 755.25.

Ceramic Christmas articles/ornaments of nonbone chinaware or of sub-porcelain are classified under TSUS item 534.94 at 9%. Note attached copy of Customs Headquarters letter 74-037689, dated December 19, 1974 (Exhibit C).

Brass Christmas articles/ornaments are classified under the provision for articles of copper in TSUS item 657.35 at 5%. Note attached copy of Customs Headquarters letter 803407, dated July 15, 1982, regarding metal Christmas ornaments (Exhibit D).

Textile Christmas articles/ornaments other than apparel or furnishings are classified under the provision of articles nspf of textile materials in TSUS item 386.13 at 10%. Note attached copy of T.D. 56545(13), regarding textile material, nspf,

Christmas decoration (Exhibit E).

Christmas greeting cards are classified under the provision for greeting cards with title or other wording under TSUS item 274.05 at 4.9%.

Music boxes including those with Christmas motifs, are classified under the provision for music boxes TSUS item 725.50 at 3.2%.

HARMONIZED SYSTEM CLASSIFICATION

Heading 9505 of the HS reads as follows:

9505		Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:
9505.10		Articles for Christmas festivities and parts and accessories thereof:
		Christmas ornaments:
9505.10.10	00	Of glass . . . . .
9505.10.20	00	Other. . . . .
9505.10.30	00	Nativity scenes and figures thereof
		Other:
9505.10.40	00	Of plastics. . . . .
9505.10.50	00	Other. . . . .
9505.90		Other
9505.90.20	00	Magic tricks and practical joke articles; parts and accessories thereof . . . . .
9505.90.40	00	Confetti, paper spirals or streamers, party favors and noise

	makers: parts and accessories thereof. . . . .
9505.90.60 00	Other. . . . .

The explanatory notes to the Brussels Nomenclature dated June 1967 for 97.05 (Currently 9505 of the HS) gives examples of Christmas tree decorations and similar articles for Christmas festivities. The explanatory notes are part of the history of the development of the HS and help to interpret the new law.

The note states in part that:

These articles include:
(1) Various decorative articles made of paper, metal foil, glass fibre, etc. (e.g., tinsel, stars and icicles); artificial snow; decorative articles made of thin blown glass (coloured balls, bells, lanterns, etc.); Christmas tree candle-holders, etc.

(2) A range of articles traditionally used at Christmas festivities, e.g., artificial Christmas trees (these are sometimes of the folding type), Nativity scenes (cribs) and figures for Nativity scenes (but not including statuettes, statues and the like of a kind used for decorating places of worship), Christmas crackers, Christmas stockings and imitation yule logs.

We believe that item (2) refers to articles classified under 9505.10.30, 9505.10.40 and 9505.10.50, and that item (1) refers to ornaments classified under 9505.10.10 and 9505.10.20.

Regarding classification of goods in the HS, note General Rules of Interpretation (GRI) 3 which states as follows:

3. When, by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. (Emphasis added).

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

There are no specific provisions in the Harmonized System for Christmas articles or ornaments other than the provisions of item 9505.

Since these articles under the tariff schedules were classified under the general provisions for "articles of" wood, metal, textile, etc., such a classification under the Harmonized System would be precluded by the language of 9505 read in conjunction with Rule 3a of the GRI. As rule 3a states, "the heading which provides the most specific description shall be preferred to headings providing a more general description."

It is our concern that the Customs Service in classifying

articles or ornaments with a Christmas motif, has no choice but to classify those items under heading 9505 of the Harmonized System. This heading is far more specific than "articles of wood," "of textile material," "of metal," etc.

As a result of this new classification, we believe that there will be significant increases in Customs duties for many items. It is our belief that in cross-referencing TSUS item numbers and HS headings, it is necessary to use similiar TSUS merchandise descriptions in calculating HS duty rates.

The Harmonized System Handbook, August 1986, states on page 2:

"The conversion was undertaken at the request of the President with the directive to avoid tariff-rate changes to the extent practicable and to simplify the tariff where possible without rate changes significant for U.S. industry, workers, or trade." (See Exhibit F)

According to the conversion table to the Harmonized System 1983 USITC Publication 1400, Annex II, item 9505.10.10 is taken from the provision for glass Christmas ornaments, item 545.87 of the TSUS at the same rate of duty; item 9505.10.20 is taken from the provision for Christmas tree ornaments, item 772.95 of the TSUS at the same rate of duty; and item 9505.10.30 is taken from the provision for nativity scenes and other religious articles, item 772.97 at the same rate of duty.

RATE OF DUTY FOR PLASTIC CHRISTMAS

ARTICLES WAS ERRONEOUSLY CALCULATED

Item 9505.10.40, other Christmas articles of plastic, is derived from the provision for artificial flowers, trees, etc. wholly or almost wholly of rubber or plastics classified under item 748.20 of the TSUS, at the same rate of duty, 4%. However, this provision of the TSUS, only provides for such artificial foliage when produced by assembling parts by "binding with flexible wire, paper, textile materials, or foil, or by gluing or by similar methods" (see headnote 1 iii of subpart 3, part 7, Schedule 7, TSUS). Most artificial flowers and foliage are not classified under this provision because they are made in a manner other than described above (by "pop-on" parts) and are classified under item 774.45 TSUS with duty at 3.4%.

Furthermore, there are other Christmas articles of plastic, which are not ornaments, such as plastic snowballs and other plastic articles which are currently classified under item 772.97 with duty at 5.3%, as plastic Christmas articles, as opposed to Christmas tree ornaments. Under the proposed Harmonized System, these articles would be classified under 9505.10.40 with duty at 8.4%. We believe that the proper rate of duty for this provision should reflect a combination of the rate for 772.97 and part of item 774.45. In any event, the rate should be no greater than 5.3%.

RATE OF DUTY FOR OTHER CHRISTMAS

ARTICLES WAS ERRONEOUSLY CALCULATED

Item 9505.10.50 covers other Christmas articles of material other than plastic and carries a duty rate of 17%. According to the 1983 ITC conversion table, this rate was arrived at by averaging duty rates of items 534.9700, 748.1500 and 748.2100 of the TSUS. With the exception of articles classified under item 748.1500, we do not know what articles presently classified under items 534.9700 and 748.2100 would be considered to be Christmas articles. Since glass or ceramic flowers are specifically excluded from 748.2100 by headnote 1i to Subpart B, Part 7 Schedule 7, and textile flowers are provided for under 389.6100 with duty at 9% there are very few items classified under 748.2100 which could conceivably be called Christmas articles. There are, however, many articles of wood, paper, textile, earthenware, metal, and wax (candles) which are Christmas articles and not ornaments, which would be classified under 9505.10.50.

We have restated below a list of the TSUS item numbers and rates of duty for 1987. Import statistics for Christmas articles under these provisions are not available because they are not broken out statistically in the TSUS.

TSUS ITEM NO.	1987 DUTY RATE
207.0020	5.1%
274.05	4.9%
386.13	10%
534.81	2¢ per dz. pcs.+ 7%
534.84	7%
534.94	9%
657.25	5.7%
657.35	5%
725.50	3.2%
755.25	5.8%

The provision for: other articles for Christmas festivities and parts and accessories, in heading 9505.10.50, is so vague that we can foresee years of litigation regarding types of items which could be classified under this heading.

In order to remove any ambiguous interpretations of heading 9505.10.50, we recommend that other headings be added to provide for specific materials, aside from plastic, which is provided for in heading 9505.10.40. We submit that specific headings for wood, metal, ceramic and textile materials be added. These additional headings would provide similiar rates of duty as that found in the current TSUS, for similiar products. This would be in line with the President's directive

(previously cited) to avoid tariff-rate changes to the extent possible.

CONCLUSION

We propose the following new headings, descriptions and duty rates:

Heading No.	Description	Duty Rate
9505.10.40	Music boxes	3.2%
9505.10.50	Candles & tapers	5.8%
	Other:	
9505.10.60	Of plastic	4.2%
9505.10.70	Of wood	5.1%
9505.10.80	Of textile	10%
9505.10.90	Of ceramic	7%
9505.20.00	Of nonbone chinaware . . or of sub-porcelain	9%
9505.20.10	Of iron or steel	5.7%
9505.20.20	Of brass	5%
9505.20.30	Other	4%

We thank you for your consideration of our request and would appreciate an opportunity to discuss this matter further at your convenience.

Sincerely,

SERKO, SIMON & ABBEY

Joel K. Simon

JKS/ms
Enclosure

Exhibits A through F attached to this statement are identical to the attachments to the statement submitted on behalf of Midwest Importers of Cannon Falls, Inc., and are not repeated here.--Ed.

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March 11, 1987

Mr. Joseph Dowley
Chief Counsel
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Dowley:

Mary Jane suggested I write to you. I represent SCM Chemicals. We are a worldwide producer of TiO2 (Titanium Dioxide) pigment. We produce 215,000 tons in the U.S. and also import product from our Australian and U.K. plants. There are three other U.S. producers and about seven foreign producers who import into the U.S. In 1986 approximately 210,000 tons were imported into the U.S. Another 100,000 tons are exported. Over 980,000 tons are consumed annually in the U.S. Consumption is primarily by the coatings, plastics, and paper industries.

We (all TiO2 producers worldwide) are concerned that the Harmonization System will dilute and confuse import/export statistics. We wish to ensure that the classification code for TiO2 not be widened. TiO2 can be easily distinguished at port of entry from similar items you may be considering adding to this classification. Therefore, please do not change the current code.

I believe the T.S.U.S. number is 4737000 and the H.S. code is 3206.10. The item I believe you are intending to add to this code is "plastic master batches." Master batches are "preparations" which include some percent of TiO2. This material cannot be included with TiO2 without terribly distorting our government statistics for the TiO2 industry.

The EEC supports the position I state in this letter. I believe they have agreed to not expand the classification.

Would you kindly consider our request and respond to it? If you need more information, please let me know.

Sincerely yours,

Bruce A. Zwicker

Bruce A. Zwicker
Director - Marketing

BAZ:jet

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* (NOT ADMITTED IN NY)

February 25, 1987

Carolyn Frank, Secretary
Trade Policy Staff Committee
Office of the U.S. Trade Representative
Room 521
600 17 Street
Washington, D.C. 20506

BY FEDERAL EXPRESS

Harmonized System-
T.S.U.S. Proposed Conversion: Record Jackets

Dear Ms. Frank:

On behalf of our client, Shorewood Packaging Corporation, 10 East 53rd Street, New York, New York, this submission is made to request a correction in the third edition of the proposed conversion from the Tariff Schedules of the United States ("TSUS") into the Harmonized Commodity Description and Coding System of the provision for phonograph record jackets. The proposed provision will result in a significant duty increase, contrary to the purpose and intent of the conversion.

Shorewood Packaging Corp. manufacturers paperboard cartons and containers in plants in New York and Georgia and is the largest supplier of packaging to the music industry in the United States. In 1985, it acquired an existing facility in Canada to

provide supplemental manufacturing capacity. Shorewood Canada purchases U.S. paperboard in sheets and rolls to be manufactured into various containers including phonograph record jackets. These articles are sold to U.S. record manufacturers for packaging phonograph records for retail distribution.

Pursuant to Ruling CLA-2 CO:R:CV:G 070040 of July 22, 1982 (copy attached), the Customs Service confirmed the proper classification of these articles as "printed matter not specially provided for (n.s.p.f.)" under T.S.U.S. item 274.80, dutiable at 2 cents per pound, rather than as "articles of paper, n.s.p.f." in T.S.U.S. item 256.90, currently dutiable at 5.3% ad valorem. However, under the latest edition of the Harmonized System conversion, "record sleeves" are provided eo nomine under heading 4819.50.40 which provides for "Other packing containers, including record sleeves: Other" dutiable at 5.3% ad valorem. This provision was derived* from T.S.U.S. item 256.90 for "articles of paper, n.s.p.f.," the classification specifically rejected by the Customs Sevice in its 1982 ruling. Thus the duty on empty record jackets would increase by a factor of 464 unless corrected.

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* Conversion of the Tariff Schedules of the United States Annotated Into the Nomenclature Structure of the Harmonized System, Annex III: Cross-Reference from Converted Tariff Schedule to Present TSUSA, USITC Pub 1400 (June 1983).

SANDLER & TRAVIS, P.A.

The current duty rate could be readily preserved by providing a specific 8-digit duty-line subvision for "record sleeves," as named in the superior heading, with a duty of 2 cents per pound as follows:*

Heading	Article Description	Rates of Duty General	Special	2
4819.50	Other packing containers, including record sleeves:			
4819.50.20	Sanitary food and beverage containers	4.3%	Free (A,E)	35%
[4819.50.30	Record sleeves	2¢ per lb.	Free (A,E,I)	8.75¢ per lb.]
4819.50.40	Other	5.3%	Free (A,E)	35%

It would be extremely inequitable to both American record manufacturers and consumers to inadvertently enact a duty increase of this magnitude as contemplated by the current proposal. Moreover, it appears that the only imports of empty record jackets into the United States are from Canada, a country with which the United States is currently engaged in negotiations towards the consummation of a free trade agreement. To suddenly and significantly increase duties on a product which impacts only

* Recommended addition indicated in brackets.

Canadian trade would be inconsistent with a trade-liberalizing policy towards Canada. Finally, the major importer of these packaging materials is the largest U.S. manufacturer who relies on Canadian manufacturing facilities to provide only auxiliary capacity.

For all the foregoing reasons, we respectfully request that converted Harmonized System heading 4819.50 be subdivided as suggested herein so that U.S. producers and consumers are not penalized for a potentially very expensive oversight.

Respectfully submitted,

SANDLER & TRAVIS, P.A.

By: Beth C. Ring

BCR:ne

274.80 of 12th printed item #2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

CUSTOMS INFORMATION EXCHANGE

AUG 16 11 44 AM '82

U.S. CUSTOMS SERVICE
BUFFALO, NIAGARA FALLS

FILE: CLA-2 CO:R:CV:G
070040 JCH

JUL 22 1982

TO : Chief, Customs Information Exchange

FROM : Director, Classification and Value Division

SUBJECT: Difference of Opinion on Customs Form 6431

In your memorandum of May 10, 1982, you transferred the difference of opinion on Customs Form 6431 dated February 9, 1982, concerning the tariff classification and marking requirements for phonograph record jackets. This merchandise is produced in Canada. This difference is listed as the twelfth difference on page 1 of C.I.E. N-89/79, suppl. 28, for March and April 1982. A decision on the marking question will be furnished in a separate reply. Our decision on the tariff classification issue follows:

ISSUE:

Under the principles of previous Headquarters decisions, the record jackets in question would be classifiable under the provision for printed matter not specially provided for (n.s.p.f.) and printed in whole or in part by a lithographic process, in item 274.80, Tariff Schedules of the United States (TSUS). The current column 1 rate of duty required under this provision is 2 cents per pound. Various Customs officers disagree with this classification claiming, in part, that our previous decisions were predicated on a practice, but that the information available when the decisions were made was insufficient to support a practice finding. It is claimed, therefore, that the merchandise is properly classifiable under the provision for articles of paper, n.s.p.f., in item 256.90, TSUS. The current column 1 rate of duty required under that provision is 7.3 percent ad valorem.

FACTS:

A sample which has been provided is a jacket for a record by a contemporary musical group. The jacket is typical for records of this type with a high quality attention-getting picture on the front of the jacket with additional pictures and textual matter on the reverse side. The textual matter includes information about each preformer in the group, about the artifacts in the picture on the front of the cover, and an index of the music on the record.

LAW AND ANALYSIS:

We will not review the practice issue at this time because we are of the opinion that the issues raised with respect to the merits of the tariff classification currently in effect do not warrant the conclusion that the tariff classififcation is clearly wrong or otherwise at variance with the current views of the Customs Service.

In challenging the current Customs position, emphasis has been placed on the similarity of record jackets to other merchandise which has a function in protecting and merchandising its contents. The question is raised, therefore, whether record jackets are a type of container similar to other containers on which there is any printing which is "merely incidental to the primary use of the article" as a container and therefore exempt from classification as printed matter by Headnote 1, Part 5, Schedule 2, TSUS.

We find, however, that the analogy to more conventional types of containers is misplaced, and that a more cogent analogy is to book jackets which we have also consistently held classifiable as printed matter or lithographs. See, for example, T.D. 68-29(9), 2 Cust. Bull. 59 (1967). We can find no basis for treating record jackets any differently. Both

record jackets and book jackets, or dust covers as they are sometimes called, add a dimension to the basic product which enhances its merchandising potential while at the same time protecting the product to some extent. In this sense, they are both similar to containers. However, unlike the typical container, book jackets and record jackets traditionally are used to give biographical information concerning authors, composers, performers, etc., and other types of information which supplements the information in the book or on the record label. Often this textual material is extensive, as where lyrics, parts of librettos or scores are furnished on the record jacket, or other information is furnished in essay or other narrative form. Pictorial and textual matter on record jackets is often original and copyrighted, and the dissemination of the record jacket in the record market constitutes a publication for copyright purposes.

Also, unlike the typical container, a record jacket, like a book jacket, is retained with a record and not disposed of. Retention of the jacket is a major factor in determining the value of collectables, and in the case of record jackets, the jacket is what is autographed when the autographs of performers, musicians, etc. are sought.

HOLDING:

[redacted]

Highlighted part accepted possibly

Harvey B. Fox

COMMENTS ON THE HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM ON BEHALF OF THE BOARD OF FOREIGN TRADE OF THE REPUBLIC OF CHINA ON TAIWAN

ABLONDI & FOSTER, p.c.
1776 K Street, N.W.
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202 296-3355

Counsel for the Board of Foreign Trade of the Republic of China on Taiwan

February 27, 1987

This statement has been prepared by the law firm of Ablondi & Foster, p.c., 1776 K Street, N.W., Washington, D.C. 20006, which is registered under the Foreign Agents Registration Act with the Department of Justice, Washington, D.C., as an agent for the Board of Foreign Trade, Republic of China on Taiwan. Copies of the registration statement of Ablondi & Foster, p.c. are filed with the Department of Justice and are available for inspection. Registration does not indicate approval of the content of this material by the United States Government.

This statement is submitted on behalf of the Board of Foreign Trade ("BOFT") of the Republic of China on Taiwan ("ROC") in response to the January 12, 1987 press release issued by the Subcommittee on Trade, Committee on Ways and Means (Press Release #1). The BOFT believes that these comments regarding the proposed conversion of the Tariff Schedules of the United States ("TSUS") into the nomenclature structure of the Harmonized Commodity Description and Coding System ("Harmonized System" or "HS") will assist the Committee in its deliberations on this matter.

I. CONVERSION OF TARIFF SCHEDULES OF THE UNITED STATES (TSUS) INTO THE HARMONIZED SYSTEM (HS) SHOULD BE TRADE NEUTRAL

The primary purpose of the conversion to the Harmonized System is to simplify the classification of goods involved in international trade by providing a uniform international classification system. See, e.g., 51 Fed. Reg. 43262, December 1, 1986. The United States began preparing for conversion to the Harmonized System in 1981 when the President requested the ITC to prepare a draft conversion. In his request, the President specifically directed that "the Commission should avoid, to the extent practicable and consonant with sound nomenclature principles, changes in the rates of duty on individual products." 46 Fed. Reg. 35274, September 30, 1981. Thus, the conversion is intended to be an administrative change, and should not substantially affect rates of duty on individual products.

In addition, the U.S. has bound itself to specified duty rates and staged reductions in duty rates over a period of time. Substantial changes which affect rates of duty which may result from the U.S. conversion to the Harmonized System would disrupt the current flow of international trade and violate U.S. agreements to the current bound duty rates. It is estimated that the proposed coversion would increase duties in excess of 15 million dollars.

II. THE FOLLOWING PRODUCT CATEGORIES WILL BE ADVERSELY AFFECTED BY THE PROPOSED TSUS CONVERSION TO THE HS

Each of the following product categories will be subjected to a higher rate of duty as a result of conversion to the HS. The impact on trade with the ROC has been estimated for each of the following items based on 1985 import levels. While Appendix I (See Appendix I for TSUS numbers and duty rates and the proposed conversion to the HS numbers and duty rates) lists numerous changes in rates of duties, the following twenty-four items reflect changes not in conformity with the President's request, i.e., that the conversion be trade neutral.

Item 8:

Conversion to the HS will result in a tariff increase of 0.5% - 5.60%. In 1985, U.S. imports from the ROC totalled $9,056,925. Thus, the conversion will increase import duties on ROC goods $45,285 - $507,188.

Item 10:

TSUS 367.63.40 "Tablecloths and napkins of manmade fibers", converts to HS 6302.53.00 "Table linen of manmade

fibers." Conversion to the HS will result in a tariff increase of 4.3%. In 1985, U.S. imports from the ROC totalled $816,412. Thus, the conversion will increase import duties on ROC goods $35,108.

Item 10:

TSUS 367.63.80 "Other furnishings of manmade fibers" converts to the HS categories shown in Appendix I. Conversion to the HS will result in a tariff increase of 1.8%. In 1985, U.S. imports from the ROC totalled $4,173,235. Thus, the conversion will increase import duties on ROC goods $75,118.

Item 18:

Conversion to the HS will result in a tariff increase of 3.0%. In 1985, U.S. imports from the ROC totalled $3,804,907. Thus, the conversion will increase import duties on ROC goods $92,547.

Item 20:

TSUS 381.65.40 "Mens' or boys' cotton nightwear" converts to HS 6207.21.00 "Mens' or boys' cotton nightshirts or pajamas." Conversion to the HS will result in a tariff increase of 3.0%. In 1985, U.S. imports from the ROC totalled $766,916. Thus, the conversion will increase import duties on ROC goods $23,007.

Item 22:

Conversion to the HS will result in an average tariff increase of 23.6%. In 1985, U.S. imports from the ROC totalled $3,360,603. Thus, assuming a level of trade equivalent to the 1985 level, the conversion will increase import duties on ROC goods $793,942.

Item 25:

TSUS 381.92.20 "Mens' or boys' coats and jackets of manmade fibers" converts to HS 6101.30.20 Mens' or boys' overcoats, carcoats, etc. of manmade fibers. Conversion to the HS will result in a tariff increase of 10.8%. In 1985, U.S. imports from the ROC totalled $190,451. Thus, the conversion will increase import duties on ROC goods $20,569.

Item 26:

TSUS 381.95.70 "Mens' or boys' swimwear of manmade fibers" converts to HS 6211.11.10 "Mens' or boys' swimwear of manmade fibers". Conversion to the HS will result in a tariff increase of 2.1%. In 1985, U.S. imports from the ROC totalled $2,709,662. Thus, the conversion will increase import duties on ROC goods $56,903.

Item 26:

TSUS 381.95.75-85 "Mens' or boys' trousers, slacks and shorts of manmade fibers" converts to HS 6203.43.30 shown in Appendix I. Conversion to the HS will result in a tariff increase of 2.4%. In 1985, U.S. imports from the ROC totalled $28,894,012. Thus, the conversion will increase import duties on ROC goods $693,456.

Item 29:

TSUS 384.23.45 and 384.23.48 "Women's or girls' trousers and slacks of manmade fibers" convert to HS 6204.63.30, shown in

Appendix I. Conversion to the HS will result in a tariff increase of 0.4%. In 1985, U.S. imports from the ROC totalled $9,401,424. Thus, the conversion will increase import duties on ROC goods $37,606.

Item 30:

Conversion to the HS will result in a tariff increase of 6.5%. In 1985, U.S. imports from the ROC totalled $449,092. Thus, the conversion will increase import duties on ROC goods $29,191.

Item 32:

Conversion to the HS will result in a tariff increase of 3.8%. In 1985, U.S. imports from the ROC totalled $427,195. Thus, assuming a level of trade equivalent to the 1985 level, the conversion will increase import duties on ROC goods of $16,233.

Item 34:

TSUS 384.54.76 "Women's, girls' or infants' sweaters of vegetable fibers except cotton" converts to HS 6110.30.20 shown in Appendix I. Conversion to the HS will result in a tariff increase of 29.6%. In 1985, U.S. imports from the ROC totalled $386,683. Thus, the conversion will increase import duties on ROC goods $114,458.

Item 35:

Conversion to the HS will result in an average tariff increase of 13%. In 1985, U.S. imports from the ROC totalled $15,677,801 (2,706,153 lbs). Thus, assuming a level of trade equivalent to the 1985 level, the conversion will increase import duties on ROC goods $2,053,792.

Item 37:

Conversion to the HS will result in a tariff increase of 2.9%. In 1985, U.S. imports from the ROC totalled $19,009,460. Thus, the conversion will increase import duties on ROC goods $551,274.

Item 39:

Conversion to the HS will result in a tariff increase of 6.5%. In 1985, U.S. imports from the ROC totalled $337,626. Thus, the conversion will increase import duties on ROC goods $24,546.

Item 43:

Conversion to the HS will result in a tariff increase of 1.2% - 3.2%. In 1985, U.S. imports from the ROC totalled $2,571,193. Thus, the conversion will increase import duties on ROC goods $30,854 - $82,278.

Item 48:

Conversion to the HS will result in a tariff increase of 2.4%. In 1985, U.S. imports from the ROC totalled $6,762,291. Thus, the conversion will increase import duties on ROC goods $162,295.

Item 59:

TSUS 700.20.20 "Athletic welt footwear of leather, other than ski boots" converts to HS 6403.19.30 shown in Appendix I. Conversion to the HS will result in a tariff increase of 3.5%.

In 1985, U.S. imports from the ROC totalled $1,350,462. Thus, the conversion will increase import duties on ROC goods $47,266.

Item 60:
Conversion to the HS will result in a tariff increase of 1.5 - 2.5%. In 1985, U.S. imports from the ROC totalled $271,556,785. Thus, the conversion will increase import duties on ROC goods $4,073,352 - $6,788,920.

Item 61:
Conversion to the HS will result in a tariff increase of 30.9%. In 1985, U.S. imports from the ROC totalled $806,887. Thus, the conversion will increase import duties on ROC goods $249,328.

Item 62:
Conversion to the HS will result in a tariff increase of 30%. In 1985, U.S. imports from the ROC totalled $1,080,926. Thus, the conversion will increase import duties on ROC goods $324,278.

Item 63:
Conversion to the HS will result in a tariff increase of 25%. In 1985, U.S. imports from the ROC totalled $6,067,664. Thus, the conversion will increase import duties on ROC goods $1,516,916.

Item 67:
Conversion to the HS will result in a tariff increase of 15.0%. In 1985, U.S. imports from the ROC totalled $546,669. Thus, the conversion will increase import duties on ROC goods $82,000.

Item 68:
Conversion to the HS will result in a tariff increase of 2.9%. In 1985, U.S. imports from the ROC totalled $12,668,397. Thus, the conversion will increase import duties on ROC goods $371,384.

Item 69:
Conversion to the HS will result in a tariff increase of 13.5%. In 1985, U.S. imports from the ROC totalled $12,651,197. Thus, the conversion will increase import duties on ROC goods $1,707,912.

Item 71:
Conversion to the HS will result in a tariff increase of 1.3%. In 1985, U.S. imports from the ROC totalled $43,732,281. Thus, the conversion will increase import duties on ROC goods $568,520.

Item 72: TSUS 748.15
Conversion to the HS will result in a tariff increase of 10%. In 1985, U.S. imports from the ROC totalled $76,914. Thus, assuming a level of trade equivalent to the 1985 level, the conversion will increase import duties on ROC goods $7,691.

Finally, please consider the following two comments regarding product categories not appearing in Appendix I.

Item 68A:

TSUS 706.34	Luggage of other textile materials, wholly or part braid	10% ad val
HS 4202.92.90	Other luggage with outer surface of plastic sheeting or of textile materials	20%

Conversion to the HS will result in a tariff increase of 10%. In 1985, U.S. imports from the ROC totalled $1,785,304. Thus, assuming a level of trade equivalent to the 1985 level, the conversion will increase import duties on ROC goods of $178,530.

Item 70A:

TSUS 735.20.20	Puzzles and parts thereof	4.64% ad val
HS 9503.60.00	Puzzles and parts and accessories thereof	6.8%

Conversion to the HS will result in a tariff increase of 2.16%. In 1985, U.S. imports from the ROC totaled $2,193,337. Thus, assuming a level of trade equivalent to the 1985 level, the conversion will increase import duties on ROC goods of $47,376.

The foregoing comments should be reviewed and the proposed conversion modified to make the conversion trade neutral and avoid possible changes in trade patterns not envisioned by the conversion.

Respectfully submitted,

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Counsel for the Board of Foreign Trade of the Republic of China on Taiwan

February 27, 1987

APPENDIX

	CURRENT TARIFF SCHEDULE OF THE UNITED STATES (TSUS)			CONVERSION OF TSUS INTO HARMONIZED SYSTEM (HS)		
	ITEM	DESCRIPTION	TSUS RATE	ITEM/	DESCRIPTION	HS RATE
1	107.78	Meat and edible meat offal prepared or preserved, valued over 30¢ per lb other	5% ad val	1602.90.90	Other meat preparations, other	10 %
2	149.26	Prunes, plums and prunelles; dried	2¢ per lb	0813.20.00	Prunes, dried	17.5%
3	222.36	Woven or party assembled material of unspun fibrous vegetable materials suitable for use in making blinds, shutters, curtains, screens or shades	3.5% ad val	4601.20.60	Woven or party assembled vegetable materials other than bamboo, rattan or willow, for mats, matting and screens	4.8%
4	310.12	Textured yarns of nylon, plied, with not over 20 turns per inch in the final twist valued over $1 per pound	8.9% ad val	5402.31.00	Textured yarn (except sewing thread) of nylon or other polymides, measuring per single yarn n/o 500 decitex, not put up for retail sale	10 %
				5402.32.00	Textured yarn (except sewing thread) of nylon or other polyamides, measuring per single yarn over 500 decitex, not put up for retail sale	10 %
5	322.10	Woven cotton fabrics, colored whether or not bleached, fancy or figured of numbers 10-19	8.7%-9.9% ad val	5208.32.30	Dyed plain weave fabrics of cotton, 85% or more cotton by weight, over 100 g/m^2 but not more than 200 g/m^2, of number 43 or lower	9.6%
				5208.42.30	Plain weave fabrics of cotton, 85% or more cotton by weight, over 100 but not over 200 g/m^2 of numbers 43 or lower of yarn of different colors	9.6%
				5208.52.30	Printed plain weave fabrics of cotton, 85% or more cotton by weight, weighing over 100 g/m^2 but not more than 200g/m^2, of number 43 or lower	9.6%

	CURRENT TARIFF SCHEDULE OF THE UNITED STATES (TSUS)			CONVERSION OF TSUS INTO HARMONIZED SYSTEM (HS)		
	ITEM	DESCRIPTION	TSUS RATE	ITEM	DESCRIPTION	HS RATE
6	376.10	Woven fabrics, chief value cotton containing silk or man-made fiber, not fancy, figured, not bleached and not colored, of numbers 10-19	7.5% ad val	5210.11.40	Unbleached plain weave fabrics of cotton, less than 85% cotton, mixed with man-made fibers, less than 200 g/m^2, of number 43 or lower	8.4%
				5210.12.00	Unbleached 3- or 4-thread twill of cotton, incl. cross twill, under 85% cotton by weight, mixed mainly with man-made fibers, not over 200 g/m^2	9.1%
				5210.19.40	Unbleached woven fabrics of cotton, under 85% cotton wt, mixed mainly with man-made fibers, not over 200 g/m^2 of number 43 or lower	8.4%
7	320.10	Woven fabrics, chief value cotton, containing silk or man-made fiber, colored, not fancy or figured, of numbers 10-19	9.5%-10.7% ad val	5210.41.40	Plain weave cotton fabrics, under 85% cotton weight, mixed mainly with man-made fibers not over 200 g/m^2, of number 43 or lower, of colored yarns	10.4%
				5210.51.40	Printed plain weave cotton fabrics, under 85% cotton by weight, mixed mainly with man-made fibers, not over 200 g/m^2, of number 43 or lower	10.4%
8	366.65	Furnishings, of cotton terry cloth, pile or tufted construction, not ornamented	7.2% ad val	6302.40.20	Table linen, knitted or crocheted	7.7%
				6302.60.00	Toilet linen and kitchen linen, of terry toweling or similar terry fabrics, of cotton	10.5%
				6304.91.00	Furnishing articles, excluding those of heading 9404, other than bedspreads, knitted or crocheted	12.8%

	CURRENT TARIFF SCHEDULE OF THE UNITED STATES (TSUS)			CONVERSION OF TSUS INTO HARMONIZED SYSTEM (HS)		
	ITEM	DESCRIPTION	TSUS RATE	ITEM	DESCRIPTION	HS RATE
9	367.55	Furnishings of man-made fibers, of pile or tufted construction not ornamented	7 % ad val	6302.40.20	Table linen, knitted or crocheted	7.7%
				6302.53.00	Table linen of man-made fibers	12.8%
				6302.93.00	Bed, table, toilet and kitchen linen of man-made fibers	10.3%
				6303.12.00	Curtains (including drapes), interior blinds and valances of synthetic fibers, knitted or crocheted	12.8%
				6303.92.00	Curtains (including drapes), interior blinds and valances of of synthetic fiber, knitted or crocheted	12.8%
				6304.91.00	Furnishing articles, excluding those of beading 9404, other than bedspreads, knitted or crocheted	12.8%
				6304.93.00	Furnishing articles, excluding those of heading 9404, other than bedspreads, not knitted or crocheted	10.6%
10	367.63	Furnishings of man-made fibers, not ornamented; other	8.5% ad val	6302.53.00	Table linen of man-made fibers	12.8%
				6302.93.00	Bed, table, toilet and kitchen linen of man-made fibers	10.3%
				6304.93.00	Furnishing articles, excluding those of heading 9404, other than bedspreads, not knitted or crocheted, of synthetic fibers	10.6%

	CURRENT TARIFF SCHEDULE OF THE UNITED STATES (TSUS)			CONVERSION OF TSUS INTO HARMONIZED SYSTEM (HS)		
	ITEM	DESCRIPTION	TSUS RATE	ITEM	DESCRIPTION	HS RATE
11	370.21	Lace handkerchifs, whether or not ornamented, and other handkerchiefs, ornamented or man-made fibers	4.5% ad val	6213.90.10	Handkerchiefs of man-made fibers	11.5%
12	374.60	Hoisery of man-made fibers, not ornamented	6¢ per lb. + 20.4% ad val	6115.93.00	Hoisery, knitted or crocheted, of synthetic fibers	18.3%
13	378.60	Other underwear, not ornamented, of knit man-made fibers	6¢ per lb. + 20.4% ad val	6107.12.00	Men's or boys' underpants and briefs, knitted or crocheted, of man-made fibers	16 %
				6108.11.00	Women's or girls' slips and panties, knitted or crocheted, of man-made fibers	16.2%
				6109.90.10	T-shirts, singlets, tank tops and similar garments, knitted or crocheted, of man-made fibers	34.6%
14	381.28	Men's or boys' lace or net dressing gowns and other apparel not specified, ornamented or not, and other ornamented wearing apparel; of man-made fibers: knit	25.5% ad val	6110.30.20	Men's or boys' sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, of man-made fibers, containing 25% or more by weight of leather	6 %
15	381.31	Men's or boys' lace or net coats, shirts, suits, swimwear, trousers, slacks, and shorts ornamented or not and other ornamented wearing apparel, of man-made fibers: not knit	30 % ad val	6205.30.00	Men's or boys' shirts of man-made fibers	30.9¢ per kg + 27.5%
16	381.49	Men's or boys' cotton dressing gowns, not knit, valued $2.50 or less each, not ornamented	8 %	6207.91.10	Men's or boys' bathrobes, dressing gowns and similar articles of cotton	11 %

	CURRENT TARIFF SCHEDULE OF THE UNITED STATES (TSUS)			CONVERSION OF TSUS INTO HARMONIZED SYSTEM (HS)		
	ITEM	DESCRIPTION	TSUS RATE	ITEM	DESCRIPTION	HS RATE
17	381.50	Men's or boys' cotton dressing gowns, not knit, valued $2.50 or less each, not ornamented	8 % ad val	6207.91.10	Men's or boys' bathrobes, dressing gowns and similar articles of cotton	11 %
18	381.52	Men's or boys' cotton pajamas, not knit, valued over $1.50/suit, not ornamented	8 % ad val	6207.21.00	Men's or boys' nightshirts and pajamas of cotton	11 %
19	381.63	Men's or boys' cotton judo, karate, and other oriental martial arts uniforms, not knit, not ornamented	6.5% ad val	6203.22.10	Men's or boys' judo, karate and other oriental martial arts uniforms of cotton	10.3%
20	381.65	Men's or boys' cotton coveralls, nightwear, dressing gowns and other apparel not specified, not knit, not ornamented	8 % ad val	6207.21.00	Men's or boys' nightshirts and pajamas of cotton	11 %
				6211.32.00	Men's or boys' track suits or other garments, of cotton	9.1%
				6217.90.00	Parts of garments or of clothing accessories, other than those of heading 6212	17 %
21	381.66	Men's or boys' knit wearing apparel of vegetable fibers except cotton, not ornamented	5 % ad val	6110.90.00	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crotched, of textile materials other than man-made fibers	6 %
22	381.69	Men's or boys' wearing apparel not specified of vegetable fibers except cotton, not knit, not ornamented	3 % ad val	6201.11.00	Men's or boys' overcoats, carcoats, capes, cloaks and similar coats of wool or fine animal hair	52.9¢ per kg +21%
				6201.91.20	Men's or boys' anoraks, windbreakers and similar articles of man-made fibers, not containing 15% or more by weight of down, etc.	52.9¢ per kg +21%

	CURRENT TARIFF SCHEDULE OF THE UNITED STATES (TSUS)			CONVERSION OF TSUS INTO HARMONIZED SYSTEM (HS)		
	ITEM	DESCRIPTION	TSUS RATE	ITEM	DESCRIPTION	HS RATE
				6203.12.00	Men's or boys' suits of synthetic fibers	30.9¢ kg +27.5%
				6203.31.00	Men's or boys' suit-type jackets and blazers of wool or fine animal hair	52.9¢ kg +21 %
				6203.33.00	Men's or boys' suit-type jackets and blazers of synthetic fibers	30.9¢ kg +27.5%
				6203.43.30	Men's or boys' trousers, breeches and shorts of synthetic fibers, not containing 15% or more by weight of down, etc.	29.9%
				6205.10.00	Men's or boys' shirts of wool or fine animal hair	52.9¢ kg +21 %
				6205.30.00	Men's or boys' shirts of man-made fibers	30.9¢ kg +29.5%
				6211.33.00	Men's or boys' track suits or other garments, of man-made fabrics	17 %
23	381.89	Men's or boys' knit shirts of man-made fibers, not ornamented	13¢ per lb + 32.5% ad val	6105.20.00	Men's or boys' knitted shirts, knitted or crocheted, of man-made fibers	34.6%
24	381.91	Men's or boys' knit swimming trunks and other swimwear of man-made fibers, not ornamented	25 % ad val	6112.31.00	Men's or boys' swimwear, knitted or crocheted, of synthetic fibers	27.6%
25	381.92	Men's or boys' knit dressing gowns, nightwear, playsuits and other apparel not specified, of man-made fibers, not ornamented	3¢ per lb + 19.2% ad val	6101.30.20	Men's or boys overcoats, carcoats, capes, cloaks, windbreakers and similar articles, knitted or crocheted, of man-made fibers	30 %

	CURRENT TARIFF SCHEDULE OF THE UNITED STATES (TSUS)			CONVERSION OF TSUS INTO HARMONIZED SYSTEM (HS)		
	ITEM	DESCRIPTION	TSUS RATE	ITEM	DESCRIPTION	HS RATE
				6110.30.20	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crotcheted, of man-made fibers,	34.6%
26	381.95	Men's or boys' coats, shirts, suits, swimwear, trousers, slacks and shorts of man-made fibers, not ornamented	14¢ per lb. + 27.5% ad val	6203.43.30	Men's or boys' trousers, breeches and shorts of synthetic fibers, not containing 15% or more by weight of down, etc.	29.9%
				6211.11.10	Men's or boys' swimwear of man-made fibers	29.6%
				6211.20.50	Men's or boys' ski-suit trousers and breeches, not containing 15% or more by weight or down, etc.	29.9%
27	381.98	Men's or boys' other wearing apparel, of man-made fibers, not knit, not ornamented	17 % ad val	6202.13.20	Women's or girls overcoats, carcoats, capes, cloaks and similar coats of man-made fibers, not containing 15% or more by weight of down, etc.	29.8%
				6202.93.30	Women's or girls' anoraks, windbreakers and similar articles, of man-made fibers, not containing 15% or more by weight of down, etc.	29.8%
28	384.21	Infants' sets up to and including 24 months of age, lace or not, whether ornamented or not, and other ornamented infants wearing apparel	25.5% ad val	6111.30.20	Babies' blouses and shirts, except those imported as parts of sets, knitted or crotcheted, of synthetic fibers	34.6%
				6209.30.20	Babies' trousers, breeches and shorts, except those imported as parts of sets, of synthetic fibers	30.4%

	CURRENT TARIFF SCHEDULE OF THE UNITED STATES (TSUS)			CONVERSION OF TSUS INTO HARMONIZED SYSTEM (HS)		
	ITEM	DESCRIPTION	TSUS RATE	ITEM	DESCRIPTION	HS RATE
29	384.23	Women's, girls's or infants' lace or net, trousers, slacks, shorts, whether or not ornamented, and other wearing apparel; of man-made fibers; not knit	30 % ad val	6204.63.30	Women's or girls' trousers breeches and shorts of synthetic fibers, not containing 36% or more by weight of down	30.4%
30	384.44	Women's, girls' or infants' cotton vests, not knit, valued over $2 each, not ornamented	8 % ad val	6202.92.20	Women's or girls' anoraks, windbreakers and similar articles, of cotton, not containing 15% or more by weight of down, etc.	14.5%
31	384.48	Women's, girls' or infants' cotton corduroy dresses, not ornamented	12 % ad val	6204.42.00	Women's or girls' dresses of cotton	12.6%
32	384.50	Women's, girls' or infants' cotton judo, karate and other oriental martial arts uniforms, not knit, not ornamented	6.5% ad val	6204.22.10	Women's or girls' judo, karate and other oriental martial arts uniforms of cotton	10.3%
33	384.53	Women, girl or infant sweater, of vegetable fiber except cotton; knit, not ornamented; subject to wool restraints and other apparel, not subject to restraints	5 % ad val	6110.90.00	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, of other textile materials	6 %
34	384.54	Women's, girls' or infants' knit apparel nspf, of vegetable fibers except cotton, not ornamented	5 % ad val	6110.20.00	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, of cotton	21 %
				6110.30.20	Sweaters, pullovers, sweatshirts, waistcoasts (vests) and similar articles, knitted or crocheted, of man-made fibers,	34.6%
				6114.30.30	Garments, knitted or crocheted, of man-made fibers	17 %

	CURRENT TARIFF SCHEDULE OF THE UNITED STATES (TSUS)			CONVERSION OF TSUS INTO HARMONIZED SYSTEM (HS)		
	ITEM	DESCRIPTION	TSUS RATE	ITEM	DESCRIPTION	HS RATE
35	384.86	Women's, girls's or infants' knit apparel, of man-made fibers, not ornamented	3¢ per lb. + 19.2% ad val	6102.30.00	Women's or girls' overcoats, carcoats, capes, cloaks, windbreakers and similar articles, knitted or crocheted, of man-made fibers	30 %
				6110.30.20	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, of man-made fibers, other	34.6%
36	384.88	Other womens's, girls' or infants' certified handloomed and folklore apparel not knit, of man-made fibers, not ornamented	3¢ per lb. + 14.2% ad val	6204.63.30	Women's or girls' trousers, breeches and shorts of synthetic fibers, containing 15% or more by weight of down, etc.	30.4%
37	384.90	Other women's trousers and slacks (other than nonwoven disposables for hospitals and the like), of man-made fibers, not knit, not ornamented	17¢ per lb. + 27.5% ad val	6204.63.30	Women's or girls' trousers, breeches and shorts of synthetic fibers, not containing 35% or more by weight of down	30.4%
38	384.91	Other women's, girls or infants' blouses, coats, shirts, suits, trousers and slacks, and shorts, not knit, of man-made fibers, not ornamented	17¢ per lb. + 27.5% ad val	6204.63.30	Women's or girls' trousers, breeches and shorts of synthetic fibers, not containing 35% or more by weight of down	30.4%
				6209.30.20	Babies' trousers, breeches and shorts, except those imported as parts of sets, of synthetic fibers	30.4%
				6211.20.50	Women's or girls' ski-suit, anaroks, windbreakers and similar articles, containing 15% or more by weight of down, etc.	29.8%

	CURRENT TARIFF SCHEDULE OF THE UNITED STATES (TSUS)			[illegible]		
	ITEM	DESCRIPTION	TSUS RATE	ITEM	DESCRIPTION	HS RATE
39	384.93	Other women, girl or infant non-woven of man-made fiber, not knit, not ornamented	17 % ad val	6211.12.10	Women's or girls' swimwear of man-made fibers	23.5%
40	384.94	Other specified women's, girls, or infants' wearing apparel, not knit, of man-made fibers, not ornamented	17 % ad val	6202.13.20	Women's or girls overcoats, carcoats, capes, cloaks and similar coats of man-made fibers, containing 15% or more by weight of down, etc., other	29.8%
				6202.93.30	Women's or girls' anoraks, windbreakers and similar articles, of man-made fibers, containing 15% or more by weight of down, etc., other	29.8%
41	384.96	Other women's or infants' wearing apparel, not ornamented	4 % ad val	6104.63.20	Women's or girls' trousers, breeches and shorts, knitted or crocheted, of synthetic fibers, other	30 %
42	386.51	Tents and tarpaulins, of cotton, not ornamented, not knit, not pile or tufted	7 % ad val	6306.11.00	Tarpaulins, awnings and sunblinds of cotton	16 %
				6306.21.00	Tents of cotton	16 %
43	389.70	Other articles nspf, not ornamented, of textile material	5.8% ad val	5609.00.40	Articles of yarn, strip of the like of heading 5404 or 5405, twine, cordage, rope or cables, nspf not elsewhere specified or included, other	8.2%
				6306.99.00	Camping goods, of textile materials other than of cotton	9 %
				6307.20.00	Lifejackets and lifebelts made up of textile materials	9 %
				6307.90.80	Dress patterns and other made-up articles of textile fabrics	7 %

	CURRENT TARIFF SCHEDULE OF THE UNITED STATES (TSUS)			CONVERSION OF TSUS INTO HARMONIZED SYSTEM (HS)		
	ITEM	DESCRIPTION	TSUS RATE	ITEM	DESCRIPTION	HS RATE
64	490.32	Fatty salts of animal origin except lithium stearate	4.2% ad val	3823.90.60	Fatty substances of animal or vegetable origin and mixtures thereof	2.2¢ per kg + 14.5%
65	533.11	Coarse-grained earthenware and stoneware articles for preparing, serving, and storing food and beverages	Free	6912.00.10	Tableware and kitchenware of earthenware, havin a reddish-colored body and a lustrous glaze of different coloring	1.4%
66	536.21	Smokers' articles, household articles, and art and ornamental articles, of ceramic tile	4.2% ad val	6912.00.50	Ceramic household articles and toilet articles other than tableware and kitchenware, not of porcelain or china	7 %
67	536.31	Smokers' articles, household articles, and art and ornamental articles, of coarse-grained earthenware or stoneware	2.1% ad val	6912.00.50	Ceramic household articles and toilet articles other than tableware and kitchenware, not of porcelain or china	7 %
				6913.90.50	Statuettes and other ornamental ceramic articles, not of porcelan or china	7 %
68	536.91	Smokers' articles, household articles, and art and ornamental articles of bone chinaware	6.6% ad val	6911.90.00	Porcelain or china household articles other than tableware or kitchenware, and toilet articles	9 %
69	610.70	Cast iron pipe and tube fittings, malleable, not advanced in condition subsequent to the casting process, other than alloy cast iron	5.1% ad val	7307.19.90	Cast fittings of iron or steel other than ductile fittings, other than of nonmalleable cast iron	6.2%
70	646.06	Thumb tacks, not elsewhere specified	4½¢ per lb.	7616.10.10	Aluminum nails, tacks and staples	5.7%
71	646.67	Furniture slides of base metal, not otherwise specified	3.8% ad val	8302.42.30	Mountings, fittings and similar articles, suitable for furniture, and parts thereof, of iron or steel, of aluminum or of zinc	5.7%

	CURRENT TARIFF SCHEDULE OF THE UNITED STATES (TSUS)			CONVERSION OF TSUS INTO HARMONIZED SYSTEM (HS)		
	ITEM	DESCRIPTION	TSUS RATE	ITEM	DESCRIPTION	HS RATE
52	649.75	Pen knives, pocket knives and other knives with folding blades or attachments, valued over $1.25/dozen	10 % ad val	8211.93.00	Knives having other than fixed blades, and parts thereof (except blades), of base metal	3¢ each + 5.4%
53	649.77	Pen knives, pocket knives and other knives with folding blades or attachments, valued over $1.25 but not over $3/dozen	2¢ each + 5 % ad val	8211.93.00	Knives having other than fixed blades, and parts thereof (except blades), of base metal	3¢ each + 5.4%
54	649.79	Pen knives, pocket knives and other knives with folding blades or attachments, valued over $3 but not over $6/dozen	2.5¢ each + 5 % ad val	8211.93.00	Knives having other than fixed blades, and parts thereof (except blades), of base metal	3¢ each + 5.4%
55	649.85	Blades, handles and other parts of pen knives, pocket knives and other knives with folding blades or attachments	1¢ each + 5.4% ad val	8211.93.00	Knives having other than fixed blades, and parts thereof (except blades), of base metal	3¢ each + 5.4%
56	651.39	Agricultural or horticultural tools and parts	Free	8201.50.00	One-handed secateurs (including poultry shears), and parts thereof, of base metal	1¢ each + 3.8%
				8201.60.00	Hedge shears, two-handed pruning shears and similar two-handed shears, and parts thereof, of base metal	1¢ each + 2.8%
57	684.94	Television Receivers and parts; monochrome assemblies (including kits for assembly into complete receivers	3.7% ad val	8528.20.00	Black and white or other monochrome television receivers	5 %
58	688.42	Electrical articles and electrical parts, not specified elsewhere, including perrite core memories, resistor/capacitator networks and other articles	3.9% ad val	9608.10.00	Ballpoint pens	0.8¢ each + 5.4%

	CURRENT TARIFF SCHEDULE OF THE UNITED STATES (TSUS)			CONVERSION OF TSUS INTO HARMONIZED SYSTEM (HS)		
	ITEM	DESCRIPTION	TSUS RATE	ITEM	DESCRIPTION	HS RATE
59	700.29	Footwear of leather, valued over $8.80 per pair (except footwear with fiber uppers) except ski boots	5 % ad val	6403.19.30	Sports footwear, with outer soles of rubber, plastics, leather or composition leather and uppers of leather, for men, youths and boys	8.5%
60	700.35	Other footwear of leather, for men, youths and boys	8.5% ad val	6403.11.00	Ski boots and cross-country ski footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather	10 %
				6404.11.20	Sports and athletic footwear with outer soles of rubber or plastics having uppers of which over 50% of the external surface is leather	11 %
				6404.19.15	Footwear with outer soles of rubber of plastics, having uppers of which over 50% of the external surface area is leather	11 %
				6405.10.00	Footwear, with uppers of leather or composition leather	10 %
61	700.51	Footwear, protective, with soles and uppers over 90% polyvinyl chloride	6.6% ad val	6401.91.00	Waterproof footwear covering the knee, with outer soles and upper of rubber or plastics	37.5%
62	700.74	Footwear with uppers of vegetable fibers and non-leather soles	7.5% ad val	6404.19.70	Footwear with outer soles of rubber or plastics and uppers, of textile materials, valued over $3 but not over $6.50/pair	90¢ pair + 37.5%
63	700.80	Footwear, uppers of fibers, other than wool felt or vegetable fibers, with non-leather soles	12.5% ad val	6404.19.50	Footwear with outer soles of rubber or plastics and uppers of textile materials, valued not over $3/pair	48 %
				6404.19.60	Footwear having certain specified soles of rubber of plastics and uppers of textile materials, valued over $3 but not over $6.50/pair	37.5%

	CURRENT TARIFF SCHEDULE OF THE UNITED STATES (TSUS)			CONVERSION OF TSUS INTO HARMONIZED SYSTEM (HS)		
	ITEM	DESCRIPTION	TSUS RATE	ITEM	DESCRIPTION	HS RATE
				6404.19.70	Footwear with outer soles of rubber or plastics and uppers of textile materials, valued over $3 but not over $6.50/ pair	90¢/pr + 37.5%
64	702.20	Headwear of vegetable fibers, except paper yarn, cotton, or flax	5 % ad val	6504.00.60	Hats and other headgear, plaited or assembled of strips of vegetable fibers, unspun fibrous vegetable materials, or paper yarn, not sewed	$1.02/ doz. + 5%
65	702.28	Headwear other than caps, of straw, sewed, blocked or trimmed, and not over $15/dozen	37¢ per doz. +3.2% ad val	6504.00.30	Hats and other headgear, plaited or assembled of strips of vegetable fibers, of unspun fibrous vegetable materials, and/or paper yarn, sewed	6.4%
66	704.05	Lace or net gloves, ornamented or not, and other gloves, ornamented, of vegetable fibers, woven	20% ad val	6216.00.38	Gloves, mittens and mitts of cotton, not impregnated, coated or covered with plastics or rubber	25%
67	704.50	Gloves, not lace, net or of vegetable fibers, made from fabric other than pre-existing machine-knit or woven fabric	10 % ad val	6116.92.20	Gloves, not impregnated, coated or covered with plastics or rubber, and mittens and mitts, knitted or crocheted, of synthetic fibers	25%
68	704.85	Gloves, not lace or of man-made fibers; knit	13¢ per lb. +17.1% ad val	6116.93.10	Gloves, not impregnated, coated or covered with plastics or rubber mittens and mitts, knitted or crotched, of synthetic fibers	20%
69	706.38	Other luggage and handbags of vegetable fibers except cotton, not pile or tufted construction	6.5% ad val	4202.92.30	Travel, sports and similar bags with outer surface of textile materials other than of cotton	20%
70	727.59	Furniture, and parts thereof, of rubber or plastic other than reinforced or laminated plastics	2.4% ad val	9401.10.80	Seats of a kind used for aircraft, except leather upholstered	4 %

	CURRENT TARIFF SCHEDULE OF THE UNITED STATES (TSUS)			CONVERSION OF TSUS INTO HARMONIZED SYSTEM (HS)		
	ITEM	DESCRIPTION	TSUS RATE	ITEM	DESCRIPTION	HS RATE
				9401.30.80	Swivel seats with variable height adjustment, not with wooden frame (other than those of heading 9402)	4 %
71	737.30	Stuffed toy figures of animate objects, valued over 10 cents per inch of height (except dolls)	5.5% ad val	9503.41.10	Stuffed toys representing animals or non-human creatures	6.8%
72	748.15	Festooning and Christmas tree decorations, of tinsel wire, bullions, lame, metallized, yarns or any combinations	7 % ad val	9505.10.50	Articles for Christmas festivities, except ornaments and nativity scenes and figures, other than of plastics	17 %
73	774.40	Articles of vulcanized fiber	Free	3926.90.90	Other articles of plastics and other materials of headings 3901 to 3914	5.3%

Comments of the Toy Manufacturers of America
on the Proposed
Harmonized Commodity Description
and Coding System

These comments are filed by Sharretts, Paley, Carter & Blauvelt, P.C. on behalf of the Toy Manufacturers of America (TMA), the toy industry trade organization representing 250 American companies which account for 90 percent of the $12 billion toys, games and dolls sold in the United States each year, in response to a Press Release, dated January 12, 1987, soliciting public comment on the third edition of the proposed conversion of the Tariff Schedules of the United States (TSUS) into the nomenclature structure of the Harmonized Commodity Description and Coding System ("Harmonized System", or "HS").

I. TMA ENDORSES CONCEPT AND GENERAL SUBSTANCE OF INTERNATIONAL CLASSIFICATION SYSTEM

TMA endorses the concept of a Harmonized System, to be used for customs tariff, statistical and transport documentation purposes, by contracting parties throughout the world. TMA believes that the creation of an international commodity system will reduce administrative burdens for all member companies and allow the TMA to more accurately monitor worldwide trade in toys, games, dolls and toy related products. TMA has carefully reviewed the 6-digit nomenclature found in Chapter 95 of the proposed HS ("Toys, games and sports equipment; parts and accessories thereof"), and believes that the descriptive language found therein is sufficiently clear and sufficiently indicative of commercial reality to form a proper basis for a world wide and United States classification system. Moreover, TMA believes that its member companies will be able to adapt to the 6-digit HS nomenclature without significant burden.

II. TMA ENDORSES GENERAL INTENT OF 8 AND 10 DIGIT UNITED STATES CLASSIFICATION SYSTEM

It is TMA's understanding that the United States will refine the 6-digit international nomenclature, by adding an additional 2-digit suffix (digits 7 and 8) upon which United States duty rates will be based and a final 2-digit suffix (digits 9 and 10) to be used by the United States for statistical reporting purposes. TMA endorses this concept. The creation of an additional detailed classification of toys, games and dolls into precise groupings should prove useful to TMA members who wish to analyze world wide trade for their particular product lines. In this regard, TMA commends the drafters of the current edition of the HS for eliminating many of the arcane tariff distinctions appearing in the TSUS,1/ and for providing a uniform rate of duty (6.8 percent) for all merchandise classified in the 4-digit heading 9503. In this manner, the Harmonized System will simplify administrative procedures for TMA

1/ For example, in the TSUS, "stuffed toys figures of animate objects valued not over 10 cents per inch of height" are classifiable in item 737.28, TSUS, dutiable at the 1987 rate of 11.2 percent ad valorem, while an identical stuffed toy "valued over 10 cents per inch of height" is classifiable in item 737.30, TSUS, dutiable at the 1987 rate of 5.5 percent. Whatever the reason which may originally have existed for distinguishing stuffed toys based on their value per inch of height, it no longer is necessary to continue this distinction today.

members, and avoid numerous costly and unnecessary administrative and judicial proceedings relating to classification issues.

III. TMA BELIEVES THAT THE 8 AND 10 DIGIT U.S. NOMENCLATURE REQUIRES FURTHER REFINEMENT AND CLARIFICATION PRIOR TO IMPLEMENTATION

Notwithstanding TMA's general endorsement of the 6-digit international HS, and the additional 4-digit U.S. suffixes, TMA believes that the current HS draft should be modified and clarified in several respects prior to final enactment. Certain modifications require changes in statutory language; other apparent discrepancies can be resolved through compilation of "legislative history." In this regard, TMA believes that the Administration and Congress should not sacrifice the need to create a substantively accurate classification system for a desire to meet a self imposed January 1, 1988 effective date. The current TSUS may not be perfect; however, it has been in existence for over two decades, and the toy industry has learned to live with its language. There is no need to repeal the current system, unless and until the HS is as close to "perfect" as possible. Hopefully, if enacted, the Harmonized System will have even a longer life than the TSUS and will reduce administration burdens on all concerned. Thus, TMA believes that it is more important for Congress to get the HS right at the time of enactment than to rush to implement an inaccurate system. In addition, where necessary, Congress should supplement the HS with precise legislative history to clarify certain statutory language (in the same manner as the Tariff Classification Study of 1960 has been an important source of determining the meaning of the TSUS).

In this regard, TMA believes that in enacting the HS, Congress should take into account the unique conditions of competition within the U.S. toy industry. TMA's member companies are fiercely competitive. Competition, however, is not between domestic producers and importers so much as it is between American based corporations with rationalized production facilities desiring to increase their sales in the U.S. market. While a substantial portion of the value of toys sold in the U.S. represent value added in the U.S. (development and design costs, tooling, marketing, advertising, component parts, packing, etc.), American toy companies have turned to foreign sources to produce certain small toys and component parts, which no longer can be sold at competitive prices if produced in the U.S. In this manner, the American toy industry has survived and prospered. It is for these reasons that TMA believes that the Harmonized Commodity and Coding System must segregate those toys, games and component parts imported and sold by TMA members from those imports which are subject to extensive political controversy; e.g., textiles and wearing apparel. TMA recognizes that classification controversies will exist upon enactment of the HS. However, TMA urges Congress to take all available measures to ensure that articles which are bought, sold, marketed, and used as toys and games are classified in Chapter 95, and are not subjected to the high rates of duty and the imposition of quota restraints and licensing requirements, applicable to products imported in competition with other American industries (e.g. textiles and wearing apparel).

Based on these general principles, TMA has identifed 10 specific instances where the language of the current draft of Chapter 95 of the Harmonized System should be modified or clarified by the creation of legislative history. For the edification of members of the Subcommittee on Trade, these areas of concern are summarized below.

1. Retention in Harmonized System of Substance of Headnote 1, Subpart E, Part 5, Schedule 7, TSUS.

Headnote 1, Subpart E, Part 5, Schedule 7, TSUS, provides that, with certain specified exceptions, any article falling within the purview of the TSUS provisions for "Models, dolls, toys, tricks, party favors," must be classified in Subpart E, Part 5, "whether or not such articles are more specifically provided for elsewhere in the tariff schedules." This Headnote is of critical importance for TMA members as it has helped ensure that the vast majority of the products imported by American toy manufacturers are classified as toys, in Subpart E, thereby insulating the toy industry from unneccessary political controversy (e.g., textiles and wearing apparel). The express language of Headnote 1, Subpart E, does not appear in the H rmonized System. TMA suggests, therefore, that an additional U.S. Legal Note be added to Chapter 95 which expressly incorporates the language of Headnote 1, Subpart E, into the Harmonized System. If Congress does not wish to place this additional Legal Note in the text of Chapter 95, we request that the legislative history to the HS clarify the fact that toys will be classified in Chapter 95, notwithstanding the fact they may be named elsewhere in the HS.

2. Definition of Toys for Tariff Purposes.

Headnote 2, Subpart E, Part 5, Schedule 7, TSUS, defines toys as "any articles chiefly used for the amusement of children or adults." No corresponding definition appears in the Harmonized System. TMA suggests that a U. S. Legal note be added to the HS incorporating the substance of Headnote 2 in this new classification system. The TMA endorses the chief or principal use concept, and believes that clarification of the meaning of the term toys is essential to prevent costly litigation, and to ensure that Chapter 95 encompasses as many articles as possible which are sold by TMA members.

3. Decision to Utilize 8-Digit or 10-Digit Categories.

All articles classified in the 4-digit general heading for toys, models, puzzles, and parts and accessories ("9503") will be dutiable at a rate of 6.8 percent; thus, these comments will not provide a detailed analysis as to why certain articles should be classified in 10-digit, as distinguished from 8-digit categories (e.g., parts and accessories for stuffed toys are classified in the 8-digit category 9503.41.30; parts and accessories for other toys representing animals or non-human creatures are classified in the 10-digit category 9503.49.00.50, under the 8-digit category for finished toys). However, the decision as to whether an 8 or 10 digit category applies to a product grouping may have a critical impact on whether a particular imported article will be eligible for duty free entry under the Caribbean Basin Economic Recovery Act (CBI), Generalized System of Preferences (GSP) or other duty free category which may be enacted in the future. TMA believes that the issue of whether 8 or 10-digit categories are appropriate for certain toys should be reviewed carefully by Congress prior to enactment of the HS.

4. Eligibility of Toys for Duty Free Entry Under the CBI.

In the current draft of the HS, 10 paragraphs in 9503-9506, of Chapter 95 have been excluded in whole or in part from eligibility for duty free entry pursuant to the Caribbean Basin Economic Recovery Act (CBI). TMA is not aware of any reason why any of the above referenced HS paragraphs should be excluded completely from CBI eligibility, and requests that Congress restore all of these paragraphs to full eligibility ("E") in the HS. In this regard, TMA believes that Congress must realize that certain toys composed of textile material should not be precluded from CBI eligibility, ostensibly because they fall within the statutory exclusion for "textile and apparel articles which are subject to textile agreements." None of the articles classified in Headings 9503-9506 ever have been subject to a bilateral textile agreement or encompassed within any sort of quota restraint. Notwithstanding that a toy may be composed of textile material, it nevertheless remains a toy, the importation of which affects the American toy industry (represented by TMA) and not the American textile industry. In this regard, TMA notes that the version of the Textile and Apparel Enforcement Act of 1985, which if enacted would have imposed quota and licensing requirements on textile imports, expressly excluded textile toys, classified in Subpart E, Part 5, Schedule 7, TSUS, from its scope. This exclusion resulted from an amendment sponsored by TMA, and supported by the major proponents of the bill. Thus, those domestic textile interests most concerned with protecting the U.S. textile and apparel industry recognized that there was no reason to impose import restraints on toys -- even those composed of textile materials. Toys derive their chief characteristic from their amusement features, and therefore do not fall within the purview of Article 12 of the Multi-Fiber Arrangment, as products that derive their chief characteristics from their textile components. Accordingly, there is no reason, either as a matter of law, trade policy, or common sense, to exclude toys from the CBI, and the TMA believe that Congress should allow all articles classified in Chapter 95 to be imported duty free under the CBI.

5. Classification of Skins for Toy Figures.

Skins for toy figures of animate or inanimate objects currently are classified in item 737.51, TSUS, dutiable at the 1987 rate of 7 percent ad valorem. No corresponding provision for toy figure skins appears in the HS. To avoid the possibility that the Customs Service might erroneously classify these skins outside Chapter 95, Congress should add an additional 8-digit paragraph to the HS, immediately preceeding 9503.41.20. In this manner, the toy figure provisions would correspond to the provision for skins for stuffed dolls in paragraph 9502.99.10.

6. Classification of Inflatable Balls.

Inflatable toy and game balls currently are classified in item 735.09, TSUS, dutiable at the 1987 rate of 4.8 percent. The HS attempts to divide this TSUS provision into inflatable toy balls, classified in paragraph 9503.90.40.40, dutiable at the rate of 6.8 percent ad valorem, and inflatable sports and outdoor game balls, classified in paragraph 9506.62.80.60, dutiable at the rate of 4.8 percent ad valorem. Under the TSUS it often has been extremely difficult for the Customs Service to distinguish between articles chiefly used for amusement (toys) and articles used for contests and competitions (games). TMA believes that it will be practically

impossible for the Customs Service to distinguish between the majority of inflatable toy balls and inflatable game balls, and that the HS distinction between these identical objects should be eliminated. This result could be accomplished by eliminating the term inflatable toy balls, in paragraph 9503.90.40, and adding a U.S. Legal Note (or an indicia of "legislative interest") confirming that all inflatable balls, not specially provided for (including toy balls) are classified in paragraph 9506.62.80.60.

7. Classification of Toy Soldiers and Action Figures Representing Human Beings.

The Customs Service has an established and uniform practice of classifying traditional toy soldiers (representing human beings) as toy figures of animate objects, in item 737.40, TSUS.[2/] In addition, the question of whether certain non-traditional toy soldiers, and other action figures[3/] are classified as dolls, in item 737.24, TSUS, or as toy figures of animate objects in item 737.40, TSUS, currently is being litigated in the Court of International Trade (CIT). Regardless of the ultimate result of this litigation, toy soldiers and action figures represent an important, distinct category of toys. Under the HS, it appears that toy soldiers (and potentially action figures) would be classified in the "basket" provision for other toys in paragraph 9503.90.40.60, since the toy figure provisions only provide for "toys representing animals or non-human creatures," as distinguished from the current provision for "toy figures of animate objects" (which include human figures other than dolls). To remedy this situation, TMA suggests that an additional 10-digit paragraph be added to the HS under paragraph 9503.90.40, for "toy soldiers and action figures (excluding dolls).

8. Classification of Toy Costumes and Other Outfits.

The Customs Service has an established and uniform practice of classifying children's Halloween costumes and other toys chiefly worn for amusement, as "other toys, not specially provided for," in item 737.95, TSUS, rather than as wearing apparel.[4/] Legal Note 1(e), Chapter 95, states that this chapter does not cover "Sports clothing or fancy dress, of textiles," whereas Note 1(t) to Section XI states that articles classified in Chapter 95 are not classified in the Section for Textiles and Textile Articles. TMA believes that where Halloween (or other children's or adult costumes) are chiefly worn for amusement, are sold by TMA members to toy stores and toy departments of other retail stores, and are designed, marketed and advertised as toys, these costumes should be classified as toys. In this manner, toys will not become embroiled in the political controversy surrounding U.S. textile imports. To avoid the possibility that the Customs Service might construe Legal Note 1(e) as requiring Customs to classify all textile costumes in Chapters 61 and 62, TMA suggests that an additional Legal Note be added to the

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2/ Similarly, the Explanatory Notes to the Brussels Tariff Nomenclature expressly excludes toy soldiers from "dolls," classified in paragraph 97.02.

3/ Action figures generally are small (less than 6" high) articulated, plastic figures of human beings, marketed as boys' toys, which the toy industry considers to be a distinct category of merchandise, separate and apart from dolls.

4/ The issue as to whether adult Halloween costumes are classified as toys currently is being litigated in the CIT.

HS to this effect, or in lieu therof, that Congress publish explanatory material to confirm that toy costumes should be classified in Chapter 95.

9. Classification of "Scale" Model Assembly Kits.

Paragraph 9503 of the HS provides for "reduced size ('scale') models." It is TMA's understanding that the Customs Service believes that in the HS, the term scale "is meant to reflect the common sense meaning of the term as used in the model trade. That is, 'scale' model does not necessarily have all parts or features built to exact scale." Because the Customs Service's interpretation of scale in the HS is different from the definition of this word under the TSUS, TMA suggests that Congress clarify the meaning of the word scale under the HS.

10. Clarification of Concept of Accessories.

One new HS principle which did not appear in the TSUS is the inclusion of "accessories" in the same provision as articles with which they are "solely or principally suitable for use." The term accessory is not defined in the HS, and TMA is concerned that this new concept may result in considerable confusion for the toy industry. In this regard, we note that "accessories" has an extremely broad meaning within the toy industry, and includes a wide variety of toys which are intended to be played with in conjunction with a particular toy. For example, accessories for fashion dolls (e.g., "Barbie") arguably include all of the separate toys sold as part of the doll's play environment. Under the TSUS, these accessory toys generally are classified as other toys, in item 737.95, TSUS, rather than in the TSUS provision for dolls or parts of dolls. Under the HS, the possibility exists that accessory toys will be classifed in paragraphs 9502.91.00 ("Garments and accessories thereof") or 9502.99.30 ("other parts and accessories") and dutiable at higher rates than would be applicable to accessories classified in paragraph 9503. It is not clear whether U.S. Rule of Interpretation 1(c) ("a provision for 'parts' or 'parts and accessories' shall not prevail over a specific provision for such part or a specific provision for such part of accessory."), will solve this potential problem. TMA suggests that Congress clarify the concept of accessories in such a manner as to ensure that the duty rates on the many accessory toys imported by American toy companies are not increased under the HS.

IV. CONCLUSION

TMA thanks the Subcommittee on Trade for the opportunity to submit these written comments on the proposed HS. As these comments reveal, TMA believes that Congress should enact this new classification system. However, there is no need to "rush to judgment" at this time, and it is more important that the HS be correct than that a self imposed January 1, 1988 deadline be met. TMA, therefore, hopes that Congress will work along with the Administration and industry representatives (such as TMA) to create a new Commodity Description and Coding System that will withstand the test of time.

MBL:lh

February 11, 1987

COMMITTEE ON
RECEIVED
FEB 13 1987
WAYS AND MEANS

Honorable Sam M. Gibbons
Chairman, Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In response to your request for comments on the proposed conversion of the Tariff Schedules of the United States into the Harmonized Commodity Description and Coding System, members of the Tuna Research Foundation (TRF) (Bumble Bee Seafoods, Caribe Tuna, Inc., Neptune Packing Inc., Star-Kist Foods, Inc. and Van Camp Seafood Company) would like to reiterate their request for a statistical breakdown of the tariff schedule heading for canned tuna in water above quota -- HS 1604.1430.

On October 10, 1986, the TRF wrote to the International Trade Commission requesting a statistical suffix. The TSUS makes a distinction between canned albacore and canned light tuna in water below quota. But once the quota is reached, all canned tuna in water is put together in one heading. We suggested the new headings for the Harmonized System to be 1604.13.3020 for albacore and 1604.13.3040 for other (light tuna). Attached is a copy of our letter.

To update the information supplied to the ITC, 1986 imports of canned tuna in water totaled 234,149,410 pounds. The 1986 tariff quota of 81,092,100 pounds was exceeded by 189 percent.

As of February 9, 1987, 50,083,334 pounds of canned tuna in water has entered the United States. The 1987 quota has not been announced but using the 1986 quota as an estimate, the 1987 quota will probably be reached in late February or early March. After the quota is surpassed, there will be no breakdown of albacore and light tuna packed in water.

Thank you for the opportunity to comment on the Harmonized System. If you require any additional information, please let me know.

Very truly yours,

Randi P. Thomas

Randi Parks Thomas
Vice President

Attachment

TUNA RESEARCH FOUNDATION, INC.

SUITE 910 · 1101 SEVENTEENTH STREET, N.W. · WASHINGTON, D.C. 20036 · (202) 296-4630

CANNED TUNA

October 10, 1986

Mr. Eugene A. Rosengarden
Chairman
Committee for Statistical Annotation
of Tariff Schedules
International Trade Commission
Washington, D.C. 20436

Dear Mr. Rosengarden:

On behalf of the members of the Tuna Research Foundation, a request is hereby made for a statistical breakdown of the tariff schedule heading for canned tuna in water above quota -- HS 1604.1430.

The members of the Tuna Research Foundation (Bumble Bee Seafoods, Caribe Tuna, Neptune Packing, Inc., Star-Kist Foods, and Van Camp Seafoods), believe this to be a worthwhile addition because tuna companies can no longer determine the amount of light and white tuna that enters the U.S. after the quota is filled.

Imports of canned tuna in water have risen dramatically in the past few years. Before 1980, the quota amount for canned tuna in water, which is based on 20 percent of the U.S. pack of canned tuna during the immediately preceeding year, had never been reached. Since that time, the quota has been exceeded in 1980, 1983, 1984, and 1985.

According to the U.S. Customs Service, 1986 imports of canned tuna in water totaled 202,512,605 pounds as of September 30, 1986. The 1986 tariff quota of 81,092,100 pounds has now been exceeded by 150 percent. In recent years there has been a trend for increasing imports.

In addition to the increasing quantities of canned tuna imports, the quota is being reached earlier and earlier in the year. For 1983, the quota was filled August 9; for 1984, July 18; for 1985, May 7; and for 1986, March 25.

The tariff schedule makes the distinction between albacore and light tuna ("other") for amounts entered below quota. But there is no distinction for above quota. We suggest a statistical suffix be included in the new Harmonized System for canned tuna in water, above quota. The new headings could be 1604.13.3020 for albacore and 1604.13.3040 for other.

Thank you for your attention to this matter. We will be happy to provide any additional information.

Very truly yours,

Randi P. Thomas

Randi Parks Thomas
Vice President

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